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GOVERNMENTS**

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No. 15 MEETING OF THE

REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD

***Tuesday, July 24, 2012
1:30 p.m. – 2:00 p.m.***

**SCAG Office
818 W. 7th Street, 12th Floor
Policy Committee Room B
Los Angeles, CA 90017
(213) 236-1800**

Teleconference Locations

**Brea City Hall, 1 Civic Center Circle, Brea, CA 92821
1233 Wolf Court, Big Bear Lake, CA 92315
2221 Rim Road, Duarte, CA 91008
1498 Main Street, El Centro, CA 92243**

Videoconference Sites

**Imperial County Regional Office
1405 North Imperial Avenue, Suite 1
El Centro, CA 92243**

Orange County Regional Office*
600 S. Main Street, Suite 912
Orange, CA 92863

*Due to the limited size of the Orange County Regional Office meeting room, participants are encouraged to reserve a seat in advance of the meeting. In the event the meeting room fills to capacity, participants may attend the meeting at the main location or any of the other video-conference locations.

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Videoconference Sites - continued

City of Palmdale
38250 Sierra Highway
Palmdale, CA 93550

Riverside County Regional Office
3403 10th Street, Suite 805
Riverside, CA 92501

San Bernardino County Regional Office
1170 W. 3rd Street, Suite 140
San Bernardino, CA 92410

Ventura County Regional Office
950 County Square Drive, Suite 101
Ventura, CA 93003

If members of the public wish to review the attachments or have any questions on any of the agenda items, please contact Ma'Ayn Johnson at (213) 236-1975 or via email johnson@scag.ca.gov

SCAG, in accordance with the Americans with Disabilities Act (ADA), will accommodate persons who require a modification of accommodation in order to participate in this meeting. SCAG is also committed to helping people with limited proficiency in the English language access the agency's essential public information and services. You can request such assistance by calling (213) 236-1993. We require at least 72 hours (three days) notice to provide reasonable accommodations. We prefer more notice if possible. We will make every effort to arrange for assistance as soon as possible.

Regional Housing Needs Assessment Appeals Board Member List

San Bernardino County: Hon. Bill Jahn, Big Bear Lake, District 11 (Alternate): **Chair**
Hon. Ginger Coleman, Apple Valley, District 65 (Primary)

Los Angeles County: Hon. Margaret Finlay, Duarte, District 35 (Primary)
Hon. Steven Hofbauer, Palmdale, District 43 (Alternate)

Orange County: Hon. Sukhee Kang, Irvine, District 14 (Primary)
Hon. Ron Garcia, Brea, OCCOG (Alternate)

Riverside County: Hon. Darcy Kuenzi, Menifee, WRCOG (Primary)
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Ventura County: Hon. Bryan MacDonald, Oxnard, District 45 (Primary)
Hon. Carl Morehouse, Ventura, District 47 (Alternate)

Imperial County: Hon. Cheryl Viegas-Walker, El Centro, District 1 (Primary)
Hon. Jack Terrazas, Imperial County (Alternate)

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Hon. Carl Morehouse, Ventura, District 47 (Alternate)

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Hon. Jack Terrazas, Imperial County (Alternate)

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REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD AGENDA TUESDAY, JULY 24, 2012

The Regional Housing Needs Assessment Appeals (RHNA) Board can consider and act upon any of the items listed on the agenda regardless of whether they are listed as information or action items.

CALL TO ORDER & PLEDGE OF ALLEGIANCE

(Hon. Bill Jahn, Chair)

PUBLIC COMMENT PERIOD – Members of the public desiring to speak on items on the agenda, or items not on the agenda, but within the purview of the Regional Housing Needs Assessment Appeals Board, must fill out and present a speaker’s card to the Assistant prior to speaking. Comments will be limited to three (3) minutes. The Chair may limit the total time for all comments.

REVIEW AND PRIORITIZE AGENDA ITEMS

INFORMATION ITEM (No Action Required)

Time Page No.

- | | | |
|---|-------------------|----------|
| 1. <u>RHNA Subcommittee Topic Outlook</u> | Attachment | 1 |
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ACTION ITEMS

- | | | | |
|---|-------------------|----------------|----------|
| 2. <u>Staff Report Regarding the Written Determinations of the RHNA Appeals Board on the Appeals Submitted by Jurisdictions related to the Draft RHNA Allocation Plan and Heard on July 12 and July 13, 2012</u>
<i>(Huasha Liu, Director of Land Use & Environmental Planning; and Joann Africa, Chief Counsel)</i> | Attachment | 20 min. | 4 |
|---|-------------------|----------------|----------|

Recommended Action: Review and ratify the written determinations on the appeals submitted by the jurisdictions related to the Draft RHNA Allocation Plan, which were heard and decided by the RHNA Appeals Board on July 12 and July 13, 2012.

- | | |
|--|-------------------|
| 2.1 <u>Written Determination Regarding Appeal from the City of Calabasas</u> | Attachment |
| 2.2 <u>Written Determination Regarding Appeal from the City of Long Beach</u> | Attachment |
| 2.3 <u>Written Determination Regarding Appeal from the City of Norwalk</u> | Attachment |
| 2.4 <u>Written Determination Regarding Appeal from the City of Pico Rivera</u> | Attachment |

REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD AGENDA TUESDAY, JULY 24, 2012

ACTION ITEMS - continued

- | | | |
|------|--|-------------------|
| 2.5 | Written Determination Regarding Appeal from the
<u>City of Sierra Madre</u> | Attachment |
| 2.6 | Written Determination Regarding Appeal from the
<u>City of San Dimas</u> | Attachment |
| 2.7 | Written Determination Regarding Appeal from the
<u>City of Dana Point</u> | Attachment |
| 2.8 | Written Determination Regarding Appeal from the
<u>County of Ventura</u> | Attachment |
| 2.9 | Written Determination Regarding Appeal from the
<u>City of Oxnard</u> | Attachment |
| 2.10 | Written Determination Regarding Appeal from the
<u>City of Ojai</u> | Attachment |
| 2.11 | Written Determination Regarding Appeal from the
<u>City of Fillmore</u> | Attachment |
| 2.12 | Written Determination Regarding Appeal from the
<u>City of Norco</u> | Attachment |

CHAIR'S REPORT

STAFF REPORT

(Ma'Ayn Johnson, SCAG Staff)

ANNOUNCEMENTS

ADDITIONAL PUBLIC COMMENT PERIOD

ADJOURNMENT

The next regular meeting of the RHNA Appeals Board/RHNA Subcommittee is scheduled for Friday, August 24, 2012 at the SCAG Los Angeles Office.

RHNA Subcommittee Topic Outlook

Meeting	Proposed Date	Subject	Action
1	February 23, 2011	Overview of RHNA Process; review RHNA Task Force recommendations; RHNA work plan and schedule; subregional delegation guidelines; evaluate issues between the DOF and Census projections; notification to HCD and Caltrans of RTP/SCS adoption date; discussion on Integrated Growth Forecast foundation	Approve charter; approve RHNA work plan and schedule; recommend to CEHD to notify HCD and Caltrans of RTP/SCS adoption date
2	March 22, 2011	Subcommittee Charter; subregional delegation	Approve the RHNA Subcommittee Charter
3	April 19, 2011	Changes to housing element requirements; AB 2158 factor discussion; Draft RHNA Methodology framework, Subregional delegation agreement	
4	May 27, 2011	Regional determination update; Social equity adjustment discussion; Subregional delegation agreement	Provide direction on subregional delegation
5	June 24, 2011	Update on RHNA consultation with HCD; social equity adjustment; replacement needs survey; AB 2158 factor survey	Recommend a social equity adjustment to CEHD
6	August 12, 2011	Replacement need survey results; AB 2158 factor survey results; continued discussion on Methodology: overcrowding; at-risk affordable units; high housing cost burdens; farmworker housing	
7	August 26, 2011	Continued discussion on proposed RHNA Methodology	Recommend proposed Methodology to CEHD
8	September 16, 2011	RHNA annexation policy	
9	October 11, 2011	Proposed RHNA Methodology excess vacancy credit application	
11	November 4, 2011	RHNA Annexation Policy	Recommend approval of annexation policy
12	December 9, 2011	Discuss Draft RHNA Allocation Plan; RHNA revisions and appeals process guidelines; proposed guidelines on RHNA transfers relating to annexation and incorporation	Recommend Draft RHNA Allocation Plan; recommend RHNA revisions and appeals process guidelines; recommend proposed guidelines on RHNA transfers relating to annexation and incorporation
13	April 19, 2012	Review submitted revision requests	Determine revision requests
14	July 12, 2012	Hearing on appeals	Determine appeals
15	July 13, 2012	Hearing on appeals	Determine appeals
16	July 24, 2012	Review and ratify the decisions on appeals	Issue written decisions regarding appeals
17	August 24, 2012	Final meeting	Recommend to CEHD proposed Final RHNA Allocation Plan

CEHD and Regional Council

Proposed Date	Meeting	Action
March 3, 2011	CEHD	Approve Subcommittee charter; approve RHNA schedule and work plan
April 7, 2011	CEHD	Approve Subcommittee charter
April 7, 2011	Regional Council	Approve RHNA schedule
June 2, 2011	CEHD and Regional Council	Approve subregional delegation agreement
June 2, 2011	Regional Council	Approve Subcommittee charter
September 1, 2011	CEHD	Recommend release of proposed RHNA Methodology
September 1, 2011	Regional Council	Release proposed RHNA Methodology
November 3, 2011	CEHD	Recommend Final RHNA Methodology
November 3, 2011	Regional Council	Approve Final RHNA Methodology
January 5, 2012	CEHD	Recommend Regional Council distribution of Draft RHNA Allocation Plan; recommend approval of revisions and appeals guidelines; recommend proposed guidelines on RHNA transfers relating to annexation and incorporation
February 2, 2012	Regional Council	Approve distribution of Draft RHNA Allocation Plan; approve RHNA revisions and appeals guidelines; approve guidelines on RHNA transfers relating to annexation and incorporation
September 6, 2012	CEHD	Approve proposed Final RHNA Allocation
October 4, 2012	Regional Council	Public hearing to adopt Final RHNA Allocation

Updated RHNA Timeline (February 2012-October 2013)

February 2, 2012	SCAG's Regional Council reviews and considers distribution of SCAG's Draft RHNA Plan.
February 9, 2012	Start of period for local jurisdictions to request revision of its Draft Allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 19, 2012	Deadline to address all revision requests by SCAG staff and RHNA Subcommittee.
April 23, 2012	Start of period for local jurisdiction to file appeal of its Draft Allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's Methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 12-13, 2012	Public hearings before RHNA Appeals Board held for appealing jurisdictions.
July 24, 2012	RHNA Appeals Board to issue written decisions regarding all appeals.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th Cycle Final RHNA Plan to HCD.
December 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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REPORT

DATE: July 24, 2012

TO: Regional Housing Needs Assessment (RHNA) Appeals Board

FROM: Huasha Liu, Director of Land Use & Environmental Planning, 213-236-1838, liu@scag.ca.gov
Joann Africa, Chief Counsel, 213-236-1928, africa@scag.ca.gov

SUBJECT: Staff Report Regarding the Written Determinations of the RHNA Appeals Board on the Appeals Submitted by Jurisdictions related to the Draft RHNA Allocation Plan and Heard on July 12 and July 13, 2012

EXECUTIVE DIRECTOR'S APPROVAL: 

RECOMMENDED ACTION:
Review and ratify the written determinations on the appeals submitted by the jurisdictions related to the Draft RHNA Allocation Plan, which were heard and decided by the RHNA Appeals Board on July 12 and July 13, 2012.

EXECUTIVE SUMMARY:
Attached are the draft written determinations prepared by Special Counsel Pat Chen regarding the twelve (12) appeal proceedings that took place on July 12 and July 13, 2012. The RHNA Appeals Board should review the draft determinations and upon their ratification by the RHNA Appeals Board, these determinations shall serve as the final decisions related to the RHNA appeals submitted by the jurisdictions.

FISCAL IMPACT:
Work associated with this item is included in the current FY 12-13 General Fund Budget (13-800.0160.03: RHNA).

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Written Determination Regarding Appeal from the
City of Calabasas

2.1

- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG’s SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the SCAG Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Calabasas submits an appeal and requests a RHNA reduction of 146 units (of the draft allocation of 330 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

Methodology: the City asserts that SCAG failed to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology

AB 2158 factors: the City cites the following factors: (1) existing or projected jobs-housing balance, (2) distribution of household growth assumed for purposes of comparable Regional Transportation Plans, and (3) market demand for housing.

Changed circumstances: the City cites changed circumstances.

B. Revision and Appeal Process

On March 13, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: existing or projected jobs-housing balance, distribution of household growth assumed for purposes of comparable Regional Transportation plans, and market demand for housing. The City requested a reduction of 76 units from its Draft RHNA Allocation.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Calabasas. After the City of Calabasas presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 76 units.

On May 25, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology, several local planning factors, and changed circumstances. The City requested a reduction of its Draft RHNA Allocation from 330 to 184 units (a reduction of 146 units).

The City of Calabasas' appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Calabasas, and assessed the City's claims regarding methodology, changed circumstances, and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Methodology

The City has not claimed that SCAG failed to apply the approved methodology, only that methodology itself, is inequitable as it is applied to the City, in comparison to other cities. This is not a valid basis for appeal under Government Code Section 65584.05(d).

Specifically, the City contends that the absence of a process by SCAG to validate local input "has opened the door for disparities, and has yielded unfair Allocations." According to the appeal, this flaw in the RHNA Allocation Methodology has significantly disadvantaged the City

with comparatively high numbers because other jurisdictions reported low projected household growth.

Because the City has provided no evidence to suggest that the City's share of assigned housing need is inconsistent with the RHNA Allocation Methodology or that SCAG failed to determine the City's Draft Allocation in accordance with the RHNA Allocation Methodology, the City has not presented a valid Methodology appeal.

Consistent with SCAG's "bottom up" policy as implemented during the regional transportation plan process, SCAG has relied upon local input for its Integrated Growth Forecast as well as the AB 2158 factors. However, in most cases, SCAG adjusted the growth forecast numbers based on recently released data from the decennial census, the California Employment Development Department and the California Department of Finance.

2. AB 2158 Factors

a. Jobs/Housing Balance

The City contends that in the local planning factors survey it submitted during the development of the RHNA Allocation Methodology, City staff erroneously provided SCAG with future employment projections directly from the City's 2030 General Plan "without having revised data to account for the effects of the current recession." According to the City, the City has experienced a large number of job losses and high office vacancy rates.

SCAG staff reviewed this information from the City and determined that it did not warrant an adjustment to the submitted data from the Integrated Growth Forecasting local input process. Moreover, employment data collected from the City, both from the local input process and the planning factors survey, was directly used by SCAG to calculate household growth projections. The general presumption is that when providing local input on household growth,

planning factors such as job-housing balance are included as part of the local input provided by the City. Moreover, the adopted RHNA Allocation Methodology took into account each member jurisdiction's existing and projected job-housing relationship. These relationships were appropriately maintained throughout the forecasting/planning horizons as part of the Integrated Growth Forecast development. While the unemployment and foreclosure conditions have already been accounted for as part of the local input process and RHNA Methodology, such condition shall not affect any jurisdiction to plan for its fair share housing need.

As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Distribution of Household Growth

The City contends that its growth trend assumptions are erroneously skewed and states that SCAG projects an accelerated growth rate during the RHNA planning period and a slower growth rate beyond the 2014-2021 planning period. According to the City, its 2030 General Plan projects the opposite trend. Because there are few developable sites and existing developments are relatively new, the City requests to reduce the assumed rates of growth to be consistent with the City's General Plan.

As stated above, per SCAG's adopted RHNA Allocation Methodology, the household growth projections were calculated using local input received from the City during the Integrated Growth Forecast process. Local input was provided for target dates of 2020 and 2035. SCAG also reviewed additional input, as provided by the City in May 2011, to develop the City's Draft RHNA Allocation. As a matter of policy, SCAG does not independently validate local input, however, in most cases (like this case), SCAG did adjust growth forecast numbers based on

recently released decennial census, the California Employment Development Department, and the California Department of Finance.

Furthermore, pursuant to state housing law, SCAG is prohibited from limiting its consideration of suitable housing sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions. Govt. Code § 65584.04(d)(2)(B). Indeed, the RHNA statute requires that SCAG consider the potential for increased residential development under alternative zoning and other land use policies. *Id.* Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Market Demand for Housing

The City asserts that its Draft RHNA Allocation should be reduced based on the lack of market demand for housing in the City due to disproportionately large local economic impacts. The City's appeal states that data provided to SCAG on the Integrated Growth Forecast was prepared in 2006 before the onset of the recession, and that the impacts of the recession have hit the City harder than in other jurisdictions.

As discussed above, per SCAG's adopted RHNA Allocation Methodology, the household growth projections were calculated using recent local input received in May 2011 for the Integrated Growth Forecast process. The general reasonable presumption is that when providing local input on household growth, planning factors such as the market demand for housing are included in the provided local input, particularly in recently provided data.

Unused land use capacity from prior RHNA cycles may be re-used to address 5th cycle RHNA site inventory requirements as long as a jurisdiction such as the City of Calabasas has an HCD approved housing element. However, once a building permit is issued, credit for the housing units must be reflected in the current RHNA cycle. *See*

jurisdictions with uncertified housing elements are required to carry over and combine the deficit in their last RHNA cycle (4th cycle) site inventory with their 5th cycle RHNA Allocation's site inventory responsibility. Gaps between the RHNA Allocation, i.e., the number of housing units to be zoned, and the number of housing units actually built are never carried over whether a jurisdiction has a certified or uncertified housing element. In short, the RHNA Allocation is not a building quota. Consistent with the RHNA Allocation Methodology, an HCD vacancy credit was also applied before finalizing the City's Draft RHNA Allocation.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

3. Changed Circumstances

The City did not present information in writing relating to this ground for appeal, however, during its appeals hearing it argued that the disproportionate impact (increased retail, industrial, and especially high commercial office vacancy rates) of the recession on the City's local economy constituted "changed circumstances" warranting a reduction in the its RHNA allocation.

The City further asserted that SCAG included two projects totaling 146 units as part of the available housing capacity, however, one of the projects is already built and the other has been permitted. The City did not anticipate those projects moving forward as fast as they did and now these units cannot be count towards the 5th cycle RHNA because they are meeting the capacity of the 4th RHNA cycle. However, the City had forecasted this capacity for future growth in response to the SCS/RTP growth forecast local input process. The City suggested that

this also presents changed circumstances meriting a revision on the information downward adjustment of the City's RHNA allocation.

According to the RHNA statute, SCAG may grant a changed circumstances appeal if it “a *significant and unforeseen change in circumstances* has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to [AB 2158].” Govt. Code § 65584.05(d)(1) (emphasis added). In this case, the City simply has not demonstrated that the disproportionate impact of the recession or the completion/permitting of the two projects were necessarily “unforeseen change[s] in circumstances.”

As discussed above, per SCAG's adopted RHNA Allocation Methodology, the household growth projections were calculated using recent local input received in May 2011 for the Integrated Growth Forecast process. The general reasonable presumption is that when providing local input on household growth, planning factors such as the market demand for housing are included in the provided local input, particularly in recently provided data. Any housing project built during the current (4th) Housing Element cycle is to accommodate the demand during the same cycle, not the future. Furthermore, a city's decision to commit to an expedited housing project in order to meet its demand simply does not constitute an unforeseen change in circumstance (note also the City was aware of the two projects at issue at the time of local input).

As such, the City has not demonstrated an unforeseen change in circumstance meriting a revision of the information it submitted

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

Written Determination Regarding Appeal from the

City of Long Beach

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region's jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan ("RTP").¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG's SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal "Open House" sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the SCAG Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file requests, but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Long Beach submits an appeal and requests a RHNA reduction of 627 units (of its draft allocation of 7,048 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

AB 2158 factors: the City cites the following factors: (1) existing or projected jobs-housing balance, (2) availability of land suitable for urban development or for conversion to residential use, (3) distribution of household growth assumed for purposes of comparable Regional Transportation Plans, and (4) market demand for housing.

Changed circumstances: the City cites changed circumstances resulting from the 2010 Census data.

B. Revision and Appeal Process

On March 13, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: existing or projected jobs-housing balance, availability of land suitable for urban development or for conversion to residential use, distribution of household growth assumed for purposes of comparable Regional Transportation plans, market demand for housing, and housing needs generation by the presence of a university campus within a jurisdiction. The City requested a reduction of 1,088 units from its Draft RHNA Allocation.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Long Beach. After the City presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 1,088 units.

On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology, several local planning factors, and changed circumstances. The City requested a reduction of 627 units of its Draft RHNA Allocation of 7,048 units.

The City of Long Beach's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Long Beach, and assessed the City's claims regarding each of the AB 2158 factors cited by the City and the asserted changed circumstances. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. AB 2158 Factors
 - a. Jobs/Housing Balance

The City contends that its historical jobs-housing balance has been housing rich and factors such as its high poverty rate and low homeownership rate, point to a need for less additional housing in the City in the future.

An analysis of the City's adjusted household and employment growth demonstrates that the City's existing jobs-household relationship is appropriately maintained and the projection

shows a moderate improvement through the 5th RHNA planning period. For example, in 2011, the City's job to household ratio was 0.98 while its projected ratio in 2021 increases to 1.00. In 2021, it is projected that the jurisdiction will have slightly higher number of jobs than households.

Furthermore, with regard to the City's higher poverty rate and lower homeownership rate in comparison to the statewide figure, one of the goals of the Regional Housing Needs Assessment is to increase the housing supply and mix of housing types, tenure, and affordability in all jurisdictions in an equitable manner. To prevent disproportionate Allocation of certain income groups where they already exist, the adopted RHNA Allocation Methodology applied a 110% social equity adjustment to the 2010 Census income categories in comparison to the county distribution. The social equity adjustment ensures that jurisdictions with a high concentration of income groups, such as low income, will receive a RHNA Allocation closer to the county distribution.

As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Availability of lands suitable for urban development or for conversion to residential use

The City asserts that the City is built out, there are no vacant single-family lots, all available parcels for residential development are multiple-family or mixed-use, and no additional sites are available beyond those identified in the adopted 4th cycle (2008 –2014) housing element. Furthermore, the City contends that it receives 55% of the Gateway Cities subregional household growth while only receiving 32% of subregional employment growth over the projection period.

Pursuant to Government Code Section 65584.04(d)(2)(B), SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions. State law requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. The City can consider other opportunities for development. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City's projected growth. Moreover, SCAG is prohibited from considering the reductions made to the City of Long Beach General Plan as a justification for a reduction to its Draft RHNA Allocation.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Distribution of Household Growth

The City argues that the RTP assumes that 55% of the household growth rate of the Gateway Cities will occur in Long Beach, but no other city in the subregion is assumed to accommodate more than 7%. Therefore, its RHNA allocation is not consistent with the RTP/SCS estimates and puts an undue burden on Long Beach to accommodate this high percentage of housing growth for the subregion.

The City further contends that its light rail service "is not a potential catalyst for new development not already assumed in the City's zoning and development standards" and the City does not have any major expansion plans for the foreseeable future.

Between 2011 and 2021, the City of Long Beach is expected to increase the number of households by 8% while the average subregional household growth rate is anticipated at a 5% rate. However, this growth is consistent with the City's expected employment growth of 10%, also higher than the subregional rate of 7%. Thus, the City's household growth is not out of proportion with its subregion.

Furthermore, similar to the aforementioned requirement that a jurisdiction must consider a variety of land use opportunities, such as infill development, to determine suitable land, per Government Code Section 65584.04(f), SCAG cannot consider a jurisdiction's General Plan designations or development standards as a justification to reduce its share of regional housing need. Moreover, current transportation focused development, or lack thereof, does not preclude addressing future household need, and additional transportation opportunities may possibly occur.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

d. Market Demand for Housing

The City contends that it is a built-out city and that no additional sites beyond parcels for multiple-family or mixed-use are available. Additionally, when combining unmet housing Allocation from its 4th cycle with the proposed 5th RHNA Allocation, the City cannot generate new residential development during the 5th cycle planning period.

According to state housing law, a jurisdiction must consider a variety of land use opportunities, such as infill development, to determine suitable land. *See* Govt. Code § 65584.04(d)(2)(B). Additionally, SCAG cannot consider a jurisdiction's General Plan designations or development standards as a justification to reduce its share of regional housing

need.

Furthermore, it appears that the City mistakenly believes that the 3rd, 4th and 5th RHNA cycle Allocation requirements will be combined in its next HCD site inventory review. Unused land use capacity from prior RHNA cycles may be re-used to address 5th cycle RHNA site inventory requirements as long as a jurisdiction such as the City of Long Beach has an HCD approved housing element. Only jurisdictions with uncertified housing elements are required to carry over and combine the deficit in their last RHNA cycle (4th cycle) site inventory with their 5th cycle RHNA Allocation's site inventory responsibility. Gaps between the RHNA Allocation, i.e., the number of housing units to be zoned, and the number of housing units actually built are never carried over whether a jurisdiction has a certified or uncertified housing element. In short, the RHNA Allocation is not a building quota.

In sum, the City has not established that SCAG failed to adequately consider information related to this factor.

2. Changed Circumstances

The City contends that during the 2000-2010 Census period, the population of Long Beach grew by a total of only 0.2%. Given this lack of population growth, the previously estimated housing needs of Long Beach will not be borne out.

Government Code Section 65584.05(d)(1) allows for jurisdictions to appeal the Draft RHNA Allocation based on a "significant and unforeseen change in circumstances [that] has occurred in the local jurisdiction." As discussed above, in developing population and household growth projections that were used as a basis for the 5th cycle RHNA Allocation, SCAG integrated 2010 Census data. In this case, the projected household growth adjusted with 2010 Census data was provided to the City on May 13, 2011. As such, the Census data does not

constitute an unforeseen change in circumstances meriting a revision of the information it submitted.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
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September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
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October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

Written Determination Regarding Appeal from the

City of Norwalk

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land

suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG’s SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the SCAG Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests, but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Norwalk submits an appeal and requests a RHNA reduction of 101 units (of its draft allocation of 200 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

Changed circumstances: the City cites changed circumstances resulting from the loss of funding due to the dissolution of the City's Redevelopment Agency.

B. Revision and Appeal Process

The City did not file revision request. However, on May 25, 2012, SCAG received a RHNA appeal from the City based on changed circumstances. The City requested a reduction of 101 units of its Draft RHNA Allocation of 200 units.

The City of Norwalk's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Norwalk, and assessed the City's claims regarding the changed circumstances. Staff's report is available at:

<http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Changed Circumstances

The City contends that The City indicates that it was forced to dissolve its Redevelopment Agency as of February 1, 2012 and has experienced significant reductions in Redevelopment Agency Low and Moderate Housing Set-Aside Funds and funding from the Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME). As a result, the City argues that it does not have viable means to execute planned projects to provide affordable housing.

The Regional Housing Needs Assessment is a determination of future housing need rather than a building quota. A lack of funding for building housing, particularly for affordable units, does not preclude jurisdictions from planning to ensure that there are adequate sites and zoning available to accommodate the projected need. Thus, SCAG staff cannot consider the lack of funding to build affordable housing as a justification to reduce the City's projected housing need. Moreover, state law recognizes that the total housing needs may exceed available resources and the community's ability to satisfy this need, and allows a jurisdiction to address this matter during the housing element process. *See* Govt. Code § 65583(b)(2).

Therefore, the City has not presented a change in circumstances that merits a revision of the information submitted by the City.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal. Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
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October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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Written Determination Regarding Appeal from the
City of Pico Rivera

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

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Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

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Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region's jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan ("RTP").¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

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Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

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Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests, but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Pico Rivera submits an appeal and requests an unspecified reduction to its Draft RHNA Allocation of 850 units. The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

AB 2158 factors: the City cites the following factors: (1) sewer or water infrastructure constraints for additional development, (2) availability of land suitable for urban development or for conversion to residential use, (3) market demand for housing, and (4) high housing cost burdens.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: existing or projected job-housing balance, sewer or water infrastructure constraints for additional development, availability of land suitable for urban development or for conversion to residential use, distribution of household growth assumed for the purposes of comparable regional transportation plans, market demand for housing, and high housing cost burdens. The City requested an unspecified reduction to its Draft RHNA Allocation of 850 units.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Pico Rivera. After the City presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of its Draft RHNA Allocation.

On May 25, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with several local planning factors. The City requested an unspecified reduction of units of its Draft RHNA Allocation of 850 units.

The City of Pico Rivera's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to

comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Pico Rivera, and assessed the City's claims regarding each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. AB 2158 Factors
 - a. Sewer or water infrastructure constrains for additional development

The City provides its Sanitary Sewer Management Plan which outlines the City's sewer system capacity and results from an evaluation of the system. The evaluation identified hydraulically deficient sewer lines which will require the construction of a larger replacement line with adequate design capacity. The City suggests that its funding is limited for its required sewer upgrades.

Pursuant to Government Code Section 65584.04(d)(2)(A), to the extent data is available from local jurisdictions, SCAG must consider:

“Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a

sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.”

The City of Pico Rivera’s 2010 Sewer/Water Infrastructure Management Plan, in and of itself, does not support the City’s suggestion that it is precluded from providing the necessary sewer or water infrastructure to accommodate future housing development.

As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Availability of lands suitable for urban development or for conversion to residential use

The City of Pico Rivera asserts that it is built out and vacant land is scarce. In addition, to meet its 4th RHNA cycle Allocation of 855 units the City converted industrial and commercial land uses, which were already limited in the City.

Pursuant to Government Code Section 65584.04(d)(2)(B), SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction’s existing zoning and/or land use policies and restrictions. Although the City has indicated that its current housing element is limited in its capacity to accommodate future housing need, Government Section 65584.04(d)(2)(B) requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City’s projected growth and allocated need.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Market Demand for Housing

The City argues that it has not received any applications or inquiries to meet the housing demand of its 4th RHNA Allocation of 855 units. According to the City, only 44 units have been built in the last RHNA planning period. The City's population has decreased according to the 2010 Census and therefore the City expects a continued lower growth rate in the next RHNA cycle. In addition, the City is experiencing a high foreclosure rate and expects to have a larger inventory of housing.

The purpose of the RHNA process is to identify future housing need for all income categories for each jurisdiction during a projection period. Jurisdictions are required to demonstrate in their respective housing elements a sites and zoning analysis to accommodate future housing need and are not penalized if these units do not get built. While permits issued document prior construction activity, it does not necessarily predict future development associated with projected growth.

SCAG's adopted RHNA Allocation Methodology took into account all indicators of market demand, including trends of building permits, household growth, employment growth and population growth, and incorporated the latest economic statistics and updated data from the 2010 Census.

With regard to a high foreclosure rate, some jurisdictions are experiencing an abnormal amount of vacancies significantly above normal market conditions. As part of the adopted RHNA Allocation Methodology, SCAG applied a RHNA future need vacancy credit to each jurisdiction with vacant units exceeding HCD's approved healthy market vacancy rate levels for

owner and renter housing. According to the 2010 Census data, the City's existing vacancies do not exceed its healthy market vacancy levels. Therefore, the City of Pico Rivera did not receive a vacancy credit as part of its Draft Allocation.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

d. High housing cost burdens

The City lists high housing cost burdens as an additional basis for its appeal request, however, no further information, documentation, or testimony was provided by the City to support this claim. Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

e. Other considerations presented

The City contends that it lacks funds to encourage the development or to participate in private development agreements. Additionally, according to the Traffic and Circulation Element of the City's General Plan, the City has limitations on its road capacity and speed. Small increases in flow will cause breakdowns in traffic movement by affecting their respective levels of service, which would cause a higher level of risk during disasters and restricted City access.

The Regional Housing Needs Assessment is a determination of future housing need based on anticipated growth and is not a building quota. A lack of local, state or federal funding for constructing or subsidizing affordable housing units does not preclude jurisdictions from planning to ensure that there are adequate sites and zoning available to accommodate its projected fair share of future housing need by income category. Thus, SCAG staff cannot consider the lack of funding as a justification to reduce the City's projected housing need.

With regard to road limitations, while the streets in question may currently lack capacity for more efficient levels of service, identifying suitable sites for future housing need does not preclude the City from updating its circulation element to accommodate more efficient levels of service. Additionally, Government Code Section 65584.04(f) prohibits SCAG from considering a standard of a City, such as a General Plan, that indirectly limits the number of building permits issued by the City as a justification for a reduction of its share of regional housing need. Therefore, SCAG cannot consider the street volume capacity from the City's General Plan as a justification to reduce the City's future housing need.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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Written Determination Regarding Appeal from the

City of Sierra Madre

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

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Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

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Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

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On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests, but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

The City of Sierra Madre submits an appeal and requests a reduction of its Draft RHNA Allocation of 55 units to 1 unit.⁴ The grounds for appeal are as follows:

Methodology: the City asserts that SCAG failed to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology

AB 2158 factors: the City cites the following factors: (1) existing or projected jobs-housing balance, (2) sewer or water infrastructure constraints for additional development, (3) availability of land suitable for urban development or for conversion to residential use, (4) lands protected from urban development under existing federal or state programs, (5) distribution of household growth assumed for purposes of comparable Regional Transportation Plans, (6) market demand for housing, (7) loss of units contained in assisted housing developments, (8) high housing cost burdens, (9) housing needs of farmworkers, and (10) housing needs generated by the presence of a university campus within a jurisdiction.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: existing or projected jobs-housing balance, sewer or water infrastructure constraints for additional development, availability of land suitable for urban development, lands protected from urban development under existing programs, distribution of household growth assumed for purposes of comparable Regional Transportation Plans, loss of units contained in assisted housing developments, high housing cost burdens, housing needs of farmworkers, and housing needs of generated by the presence of a university campus. The City requested an unspecified reduction of units from its Draft RHNA Allocation of 55 units.

⁴ During the July 12, 2012, hearing, the City requested an allocation of zero units. SCAG's Chief Counsel indicated that pursuant to the RHNA statute, SCAG cannot allocate zero units to any local jurisdiction. Sierra Madre then revised its request to a RHNA allocation of 1 unit.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Sierra Madre. After the City of Sierra Madre presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request.

On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology and several local planning factors. The City requested an unspecified reduction of its Draft RHNA Allocation of 55 units.

The City of Sierra Madre's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Sierra Madre, and assessed the City's claims regarding methodology and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony

and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Methodology

The City has indicated in its appeal application that it bases its appeal on SCAG's misapplication of its adopted RHNA Allocation Methodology. However, no statement, information, or testimony from the City has been provided to support this appeal basis. As such, the City has not justified an appeal on this ground.

2. AB 2158 Factors

a. Jobs/Housing Balance

In its AB 2158 factors survey response (submitted as part of its appeal), the City indicates that it has a significant job-housing imbalance and that while the current City ratio is 0.63 jobs per housing unit, according to the City the optimal ratio is around 1.50 jobs per housing unit. Additional housing units would exacerbate the City's current jobs-housing relationship which it contends already favors the recommended number of housing units.

Pursuant to SCAG's adopted Allocation Methodology for this 5th cycle RHNA, SCAG has concluded that the existing and projected jobs-housing relationships are stable and appropriately maintained for SCAG local jurisdictions throughout the forecasting and planning horizon. The general presumption is that when providing local input on household growth, planning factors such as jobs-housing balance are included as part of the local input provided. Moreover, the adopted regional Allocation Methodology took into account each member jurisdiction's existing and projected jobs-housing relationship. These relationships were appropriately maintained for the City of Sierra Madre throughout the forecasting/planning horizons as part of the Integrated Growth Forecast development.

As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Sewer or water infrastructure constraints for additional development

The City asserts that it is one of very few jurisdictions and possibly the only jurisdiction in the San Gabriel Valley region entirely dependent on local ground water for its water supply. The City submitted documentation with regard to its water supply constraints including a letter from its main water provider, Raymond Basin Management Board, indicating that the City's supply is declining.

Pursuant to Government Code Section 65584.04(d)(2)(A), to the extent data is available from local jurisdictions, SCAG must consider:

“Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and ***distribution decisions made by a sewer or water service provider*** other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.”

Govt. Code § 65584.04(d)(2)(A) (emphasis added). While the letter provided by the City indicates that “declining water levels have a direct impact on the quantity, and in some cases, the quality of groundwater supplies to your city,” this letter does not constitute a “supply and distribution decision” made by the Raymond Basin Management Board. There is no evidence that the City's main water provider has made a decision that would preclude the City from providing water supply to accommodate future growth.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Availability of lands suitable for urban development or for conversion to residential use

In its AB 2158 factors survey response, the City indicates that it is a “built-out” community, and that its 610 acres of vacant land is unsuitable for high-density residential housing due to hillside and other topography issues. The City also argues it is important to maintain its commercially-zoned areas, as designated in its General Plan, to continue its economic viability and, additionally, there are no remaining vacant lots in these areas.

Pursuant to Government Code Section 65584.04(d)(2)(B), SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction’s existing zoning and/or land use policies and restrictions. Although the City has indicated that it is “built-out” and that there are remaining vacant lots, Government Section 65584.04(d)(2)(B) requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City’s projected growth and allocated need.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

d. Lands protected from urban development under existing federal or state programs

In its AB 2158 factors survey response, the City indicates that the Sierra Madre Mountain Conservancy holds a conservation easement over 1,403 acres within the City boundary and that these easements prohibit development of housing on these properties.

As part of the development of the household projections through the Integrated Growth Forecast process, SCAG staff surveyed all jurisdictions for their input on the projected household growth. The local input served as the basis for household projections so that local planning constraints, such as protected open space, could be identified prior to the AB 2158 local planning factors survey and prior to calculating the Draft RHNA Allocation. The City provided input to SCAG on its household growth projection. As such, the open space and easement in question have already been taken into account in the input the City provided to SCAG.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

e. Distribution of household growth assumed for purposes of comparable Regional Transportation Plans

In its AB 2158 factor survey, the City indicates that because it is not within walking distance of an existing or planned transit station, development of higher density transit-oriented housing is not viable. Furthermore, The City is not located along a pass-through route that would make it an appropriate location for transit oriented development.

Although high density transit-oriented housing is one tool for identifying suitable sites, other types of zoning or policies should be considered by a jurisdiction to accommodate its projected growth. Similar to the staff response on the availability of land suitable for urban

development, a jurisdiction should explore alternative development opportunities such as infill development and underutilized land. Moreover, current transportation focused development, or lack thereof, does not preclude addressing future household need, and additional transportation opportunities may possibly occur.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

f. Market Demand for Housing

In its AB 2158 factor survey, the City states that its housing prices of \$390 per square foot are significantly higher than the County average, and that the cost of developing affordable housing would not be economically feasible without significant subsidies that are unavailable on the local level.

The purpose of the Regional Housing Needs Assessment process is to identify future household need for all income categories for each jurisdiction for a projection period. Jurisdictions are required to demonstrate in their respective housing elements a sites and zoning analysis to accommodate this need. Jurisdictions will not be penalized if these units do not get built. While there are limited resources available for the implementation and building of housing units, particularly for affordable units, it does not preclude jurisdictions from ensuring that there are adequate sites and zoning available to accommodate the projected need for all income levels.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

g. Loss of units contained in assisted housing developments

In its appeal application, the City has identified the loss of units contained in assisted housing developments as a basis for an appeal. However, in its AB 2158 factors survey response, the City indicated that there is no need to address the loss of low income housing units in its RHNA Allocation. The City explained that there is only one assisted housing development in the City, which is subject to a covenant to maintain low-income units until the year 2061.

SCAG accepted and considered the City's AB 2158 factors survey response stating that there is no additional need resulting from the loss of low income units that would need to be addressed in its Draft RHNA Allocation. Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

h. High housing cost burdens

Although the City has cited high housing cost burdens as a basis for its appeal, in its AB 2158 factors survey response, the City states that its residents are not characterized as experiencing high housing cost burdens.

SCAG accepted and considered the City's AB 2158 factors survey response indicating that the City does not have high housing cost burdens that would need to be addressed in its Draft RHNA Allocation. Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

i. Housing needs of farmworkers

In its appeal application, the City has identified farmworker housing need as a basis for an appeal. However, in its AB 2158 factors survey response provided as part of its appeal application, the City indicated that no farmworker housing is needed in the City.

SCAG accepted and considered the City's AB 2158 factors survey response indicating that no farmworker housing is needed in the City that would need to be addressed in its Draft RHNA Allocation. Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

j. Housing needs generated by the presence of a university campus within a jurisdiction

In its appeal application, the City has identified student housing need generated by a university as a basis for an appeal. However, in its AB 2158 factors survey response, the City indicated that it does not have any universities within City boundaries and that the demand for student housing from other jurisdictions is insignificant.

SCAG accepted and considered the City's AB 2158 factors survey response indicating that the City does not have housing need generated by a university that would need to be addressed in its Draft RHNA Allocation. Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.
Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

Written Determination Regarding Appeal from the

City of San Dimas

2.6

- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG’s SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

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THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests, but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of San Dimas submits an appeal and requests a RHNA reduction of 172 units (of the draft allocation of 463 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

Methodology: the City asserts that SCAG failed to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology

AB 2158 factors: the City cites the following factors: (1) availability of lands suitable for urban development or for conversion to residential use, (2) lands protected from urban development under existing federal or state programs, (3) distribution of household growth assumed for the purposes of comparable Regional Transportation Plans, (4) Market demand for housing, and (5) loss of units contained in assisted housing developments.⁴

Changed circumstances: the City cites changed circumstances.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: (1) availability of lands suitable for urban development or for conversion to residential use, (2) lands protected from urban development under existing federal or state programs, (3) distribution of household growth assumed for the purposes of comparable Regional Transportation Plans, (4) Market demand for housing, and (5) loss of units contained in assisted housing developments. The City requested a reduction of an unspecified number of units from its Draft RHNA Allocation.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of San Dimas. After the City of San Dimas presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 76 units.

⁴ Although the City indicated it was filing its appeal based on only one planning factor, distribution of household growth assumed for purposes of comparable Regional Transportation Plan, the City also stated, "[w]e continue to stand by our detailed information we reported during the Revision Request process with regard to 5 of the AB 2158 factors: [listed]." As such, SCAG is addressing all planning factors raised by the City in both the revision and appeal process.

On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology, several local planning factors, and changed circumstances. The City requested a reduction of 172 units from its Draft RHNA Allocation of 463 units.

The City of San Dimas's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference. The City did not appear at the hearing; rather, it requested that SCAG staff read an emailed statement into the record, which is attached herein as Exhibit B.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to San Dimas, and assessed the City's claims regarding methodology, changed circumstances, and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Methodology

The City argues that state law requires regional planning agencies to maintain a growth forecast within 3% of the Department of Finance (DOF) growth forecast. However there is a significant gap in population, households, and employment estimates between the 2010 Census, DOF, and SCAG's 2012 Regional Transportation Plan (RTP). According to the City's appeal, the SCAG 2012 RTP estimates are 10% higher in population for the City in comparison to the DOF projections.

It appears that the City is challenging the process by which the California Department of Housing and Community Development (HCD), in consultation with SCAG, develops the regional housing need determination pursuant to Government Code Section 65584.01. This process involves the determination of projected population growth on a regional level rather than on a jurisdictional level. According to this provision in the state housing law, if SCAG's regional population forecast is greater than 3% of the DOF regional population forecast, HCD and SCAG must meet to discuss the methodology and seek agreement on the regional population projection.

As described above, the regional determination process by HCD in consultation with SCAG occurred between June and August 2011, and culminated in SCAG's receipt of a regional housing need determination by HCD as set forth in HCD's letter dated August 17, 2011. Under state housing law, specifically Government Code Sections 65584.04(a) and 65584.05(a), projected housing need on a jurisdictional level is determined after this process using an adopted RHNA Allocation Methodology.

Because no evidence has been provided by the City to indicate that SCAG failed to determine the City's Draft RHNA Allocation in accordance with SCAG's adopted RHNA Allocation Methodology, the City has not presented a valid methodology appeal.

2. AB 2158 Factors

a. Availability of lands suitable for urban development or for conversion to residential use

The City contends that while “there is some vacant land remaining in the City, a large portion of the land is constrained by existing geographically unstable areas that are within the City’s boundary, steep slopes that prohibit development and utility connections” This particular area encompasses approximately 500 acres and is located in the northern San Dimas Foothills. These physical constraints to development, the City argues, limit the City’s ability to provide housing opportunities identified by SCAG.

Government Code Section 65584.04(d) (2) (B), requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction’s existing zoning and land use policies and restrictions. While the City may not have significant amounts of vacant land, it does not necessarily mean that the City cannot consider other opportunities for development to accommodate the growth. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Local growth input from the city gathered through the Integrated Growth Forecast process was incorporated into the RHNA process according to the adopted RHNA Methodology and was the basis for determining its RHNA share of future need in a manner that is consistent with state housing law requirements and prohibitions.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Lands protected from urban development under existing federal or state programs

The City asserts that its northern San Dimas Foothills area is home to endangered and threatened wildlife as outlined by the California Department of Fish and Game. According to the City, it is unable to meet its projected housing need due to the land use limitations in this area of the City.

As part of the development of the household projections through the Integrated Growth Forecasting process, SCAG staff surveyed all jurisdictions for their local input on projected household growth. The local input served as a starting point for household projections so that local planning constraints, such as protected open space, could be identified before the AB 2158 local planning factors survey and before the Draft RHNA Allocation distribution to jurisdictions. The City of San Dimas provided its input to SCAG on its household growth projection, which SCAG used for the development of the Draft RHNA Allocation. The open space in question has already been considered in the Draft RHNA Allocation. Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Distribution of Household Growth

The City argues that the current Allocation is disproportional to the RHNA Allocation that SCAG developed in 2006 [sic]. Moreover, the City explains that it is currently conducting an inventory of greenhouse gas emissions to help develop a Climate Action Plan (CAP) in collaboration with the San Gabriel Valley Council of Governments. As part of the CAP development, the City conducted a review of its transportation emissions utilizing SCAG's 2003 Travel Demand Model (TDM). According to the City, there are significant discrepancies of the model input data in both household and employment numbers. Because of this discrepancy, its

Draft RHNA Allocation should be reduced. For example, the household estimation for the City is approximately 2,000 higher in the 2003 TDM than in the 2010 Census.

The City also asserts that it never accepted or approved the latest growth projections developed by SCAG, and that it invested considerable time and effort to redress the erroneous data used by SCAG in its modeling process. It states that the City actually had a negative growth from 2000-2010 even though SCAG Staff was projecting thousands of new households. SCAG's projections are unrealistically high because of the current economy and the lack of readily buildable land in the City.

While the City argues that the current Allocation is disproportional to the last RHNA cycle, this information is not relevant to this planning factor because the RTP for the current RHNA cycle is different from the prior RHNA cycle. The previous RHNA Allocation used the 2007 Integrated Growth Forecast, which was used to also develop the 2008 RTP. The comparable RTP for the 2012 RHNA is the 2012 RTP.

As part of the development of the household projections through Integrated Growth Forecast process, SCAG staff surveyed all jurisdictions for their input on projected household growth. The City of San Dimas provided its input on population, household, and employment projections, which SCAG used as the basis to determine the projected housing need, and is thus consistent with the local input provided. The adjusted growth forecast, which was based on local input, projects a 5.3% annual household growth rate between 2011 and 2021. In comparison, the City's population and employment are expected to grow at 4.7% and 8.2%, respectively. This data suggests that the population growth rate is similar to household growth rate and the employment growth rate is notably higher than the household growth rate.

Furthermore, pursuant to state housing law, SCAG is prohibited from limiting its consideration of suitable housing sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions. Govt. Code § 65584.04(d)(2)(B). Indeed, the RHNA statute requires that SCAG consider the potential for increased residential development under alternative zoning and other land use policies. *Id.*

In the City's revision request, the City notes there is a discrepancy between the 2003 SCAG TDM and its 5th RHNA cycle (2012 RHNA) Draft housing need. Similar to the citation of comparable Regional Transportation Plans, the 2003 SCAG TDM model is comparable to the 2001 RTP and the 2012 RHNA cycle is comparable to the 2012 RTP. Moreover, as part of the determination of household growth projection for the 2012 RHNA, SCAG used the 2010 Census data to ensure consistency between the 2012 RTP and the 2012 RHNA.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

d. Market Demand for Housing

The City contends that the lack of market demand for housing warrants a reduction in its assigned housing need. It argues that it has issued only 34 building permits between 2008 and 2011, which indicates slow building activity. Furthermore, it states that the market demand for housing is considered as a function of population and employment growth in the regional growth forecast and local input. The City cites that its population growth rate is only expected to increase 1%, while its employment rate will increase approximately 6%.

The purpose of the Regional Housing Needs Assessment process is to identify future household need for all income categories for each jurisdiction for a projection period. Jurisdictions are required to demonstrate in their respective housing elements a sites and zoning

analysis to accommodate the housing need. Jurisdictions are not penalized if these units do not get built. While permits issued document prior residential construction activity, it does not necessarily predict future development.

As part of the development of the household projections through Integrated Growth Forecast process, SCAG staff surveyed all jurisdictions for their input on projected household growth. The City of San Dimas provided its input on population, household, and employment projections, which SCAG used as the basis to determine the projected housing need, and is thus consistent with the local input provided. The adjusted growth forecast, which was based on local input, projects a 5.3% annual household growth rate between 2011 and 2021. In comparison, the City's population and employment are expected to grow at 4.7% and 8.2%, respectively. This data suggests that the population growth rate is similar to household growth rate and the employment growth rate is notably higher than the household growth rate.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

e. Loss of units contained in assisted housing developments

In its revision request, the City has identified 105 units at two assisted housing developments within the City that are at risk of conversion to market rate. The City contends that without the assistance of the Redevelopment Agency to preserve these properties, the City will have a potential loss of affordable housing.

The conversion of low income units into non-low-income units was not explicitly addressed in the development of the RHNA Allocation Methodology. As part of SCAG's adopted Allocation Methodology for this 5th cycle RHNA, SCAG provided statistics to local jurisdictions on the potential loss of units in assisted housing developments. The loss of such

units affects the proportion of affordable housing needed within a community and the region as a whole, and may signal a need to plan for additional affordable housing. However, rather than assign explicit need based on this factor, SCAG's assessment concluded that this factor would be best addressed through a jurisdiction's existing housing need statement included in its housing element update. This would provide local jurisdictions the discretion to adequately address the potential loss of low income units.

Furthermore, while there are limited local, state and federal resources available for the implementation and building of housing units, particularly for affordable units, it does not preclude jurisdictions from ensuring that there are adequate sites and zoning available to accommodate the projected future housing need.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

3. Changed Circumstances

The City contends that new DOF and 2010 Census numbers are evidence that the population, household, and employment forecasts for the City were grossly over-estimated by SCAG. To support its argument, the appeal cites a recent USC Pitkin-Myers study ("USC Study") that examines DOF projections from 2007 against the more recent Census and DOF figures. The City writes that the new predictions differ significantly from California's official population projections that were originally used during the RHNA cycle. Also cited are articles from the Los Angeles Times and DOF, which all indicate that future population estimates are lower than predicted.

According to the RHNA statute, SCAG may grant a changed circumstances appeal if it "a *significant and unforeseen change in circumstances* has occurred in the local jurisdiction that

merits a revision of the information submitted pursuant to [AB 2158].” Govt. Code § 65584.05(d)(1) (emphasis added). In this case, the City has not demonstrated that the recent DOF data and USC Study presents a significant and unforeseen change in circumstances.

The recent DOF data and USC Study provided by the City are not inconsistent with the City’s Draft RHNA Allocation, which was based on updated 2010 Census and 2011 DOF population and household estimates as required by state housing law and the adopted RHNA Allocation Methodology. Because the DOF data reflects only regional numbers (which are updated every year) and does not affect the projected household growth, it is not considered significant. Likewise, the USC Pitkin-Myers study examines DOF data on a regional level only.

The City of San Dimas provided its local input on the number of households for the 2020 and 2035 target years, which was used to determine household growth. This household growth was appropriately maintained and applied to the adjusted base years using the 2010 Census and the latest estimate from DOF (2011).

Therefore, the City has failed to present a valid change in circumstances appeal.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City’s appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

From: Ann Garcia [<mailto:agarcia@ci.san-dimas.ca.us>]

Sent: Thursday, July 12, 2012 10:38 AM

To: Ma'Ayn Johnson; Jahn, Bill; MacDonald, Bryan A.; Morehouse, Carl E.; Viegas-Walker, Cheryl; Kuenzi, Darcy; Coleman, Ginger; Terrazas, Jack; Finlay, Margaret E.; Lane, Randon; Garcia, Ron; Hofbauer, Steven D.; steve.hofbauer@yahoo.com; Kang, Sukhee; Sharon Neely; Huasha Liu; Ma'Ayn Johnson; Mark Butala

Cc: lstevens@ci.san-dimas.ca.us

Subject: San Dimas RHNA Appeal Statement

Ma'Ayn,

Please read our statement below at the Appeal hearing for the City of San Dimas. We have contacted Pico Rivera and informed them we will not be in attendance and appreciate their assistance with the timing issue.

Thank you.

Ann Garcia

To: SCAG Staff and Appeals Board

The City of San Dimas experienced lay-offs today as a result of continuing State intrusions on local governments budgets. As a result of these circumstances our presence is required at City Hall and no one will appear on behalf of the City at today's RHNA appeal hearing. We nevertheless request that you grant the appeal based upon materials submitted. We would like to emphasize the following points:

- Prior growth estimates from SCAG, particularly in 2008, have been SUBSTANTIALLY off resulting in the City having to demonstrate adequate sites for excessive growth projections and having to rezone excessive property for the low/very low component. While the adequate sites analysis does not carry forward the rezoning necessary to comply with State law for the low/very low component are in fact CUMULATIVE. We have confirmed this through HCD Staff. Simply dismissing these past poor estimates because a different projection methodology is being used is irresponsible and unfair on SCAG's part.
- In spite of Staff's continuing insistence that the City accepted or approved or signed off on the latest growth projections, that is simply not true. The City certainly commented on these estimates actively and invested considerable time and effort to redress the erroneous data used by SCAG in its modeling process. These comments and this participation never rose to the level of approval of your projections. Census and other information was not available during much of this process. The City actually had a negative growth from 2000-2010 even though the SCAG Staff was projecting thousands of new households. Your current projections are unrealistically high because of the current economy and the lack of readily buildable land in the City.

- We would also point out that City Staff followed the calculation models in the SCAG power point presentations and concluded that the projections were substantially less than those currently appealed. Upon reviewing this with SCAG Staff we were advised that the presentation doesn't include or fully define all factors in the calculation. Why have a presentation if it cannot be used as a tool to verify the resulting output? It appears that the SCAG Staff always believes they are right and the appellants are wrong.

We are disappointed in the Staff recommendation and we think it is not impartial or fair for this appeal to be heard by the same body that denied our prior appeal.

City of San Dimas

*Ann Frances Garcia
Community Development
City of San Dimas
245 E Bonita Ave.
San Dimas, CA 91773
Phone: (909) 394-6282*

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Written Determination Regarding Appeal from the
City of Dana Point

2.7

- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

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In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the SCAG Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, and to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

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Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

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II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
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III.

THE CITY'S APPEAL

A. City's Appeal

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

The City of Dana Point submits an appeal and requests a reduction of 163 units from its Draft RHNA Allocation of 327 units.⁴ The grounds for appeal are as follows:

Methodology: the City asserts that SCAG failed to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology

B. Revision and Appeal Process

SCAG did not receive a revision request from the City. On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology. The City requested a reduction of an unspecified number of units from its Draft RHNA Allocation.

The City of Dana Point's appeal was heard by the RHNA Appeals Board on July 12, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Dana Point, and assessed the City's claims regarding methodology, changed circumstances, and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071212.htm> and incorporated herein by reference.

⁴ Although the City's appeal application requested a reduction of an unspecified number of units, during the hearing on July 12, 2012, the City requested a 50 percent reduction of units to 164 units.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Methodology

The City contends that it is nearly completely built out with only a few remaining vacant parcels. In addition, its assigned housing need projection is unreasonable and unattainable, which far exceeds the numbers assigned to adjacent South Orange County cities with similar topography and size. Moreover, the City disagrees with its employment growth assignment and that it does not anticipate the significant demand for jobs or development potential in the future, which was provided by the City during the local input process.

Pursuant to Government Code Section 65584.04(d)(2)(B), SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions. State law requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. The City can consider other opportunities for development. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City's projected growth.

Furthermore, the purpose of the Regional Housing Needs Assessment is to identify the projected housing need for each individual jurisdiction. The process for developing future

housing need is accomplished through a combination of the extensive local input and application of the observed data from established sources such as the 2010 Census and California Department of Finance. Due to the variation among jurisdictions such as local planning factors and other circumstances, assigned housing needs among different jurisdictions, even if similar in size, are difficult to compare.

Pursuant to SCAG's adopted RHNA Allocation Methodology, the household growth projections for the City of Dana Point were calculated using local input provided by CDR on behalf of the City from the Integrated Growth Forecast process. As a matter of policy, SCAG does not independently validate local input, however, in most cases (like this case), SCAG did adjust growth forecast numbers based on recently released decennial census and the California Employment Development Department. The employment data collected from this process was not used by SCAG for the purpose to directly calculate household growth projections. Moreover, the adopted regional Allocation Methodology examined existing and projected jobs-housing relationship at the jurisdictional and regional level. The resulting jobs-housing relationship from the Integrated Growth Forecast showed a stable or moderate improvement for SCAG region local jurisdictions throughout the planning horizon.

Because there is no indication provided that the City's share of assigned housing need is inconsistent with the adopted RHNA Allocation Methodology, the City has failed to present a valid methodology appeal.

2. Other Considerations

The City asserts that it currently has unconstructed needs from the 1998-2005 [3rd] RHNA cycle. According to the City, these numbers are a challenging goal and the addition of its 5th RHNA cycle allocation will make the total RHNA goals unrealistic and unattainable to

achieve.

With regard to unmet housing need, the Regional Housing Needs Assessment is not a building quota. Jurisdictions are required to plan and accommodate for future housing need through sites and zoning analysis, but they are not penalized if the building of these units do not occur. Additionally, as of July 2009, the City has a compliant 4th cycle housing element certified by the California Department of Housing and Community Development. State housing law requires jurisdictions to zone for unmet need from the 4th cycle in addition to current need in cases where the jurisdiction did not complete the appropriate zoning or find suitable sites to accommodate its assigned RHNA Allocation, per Government Code Section 65584.09. However, it does not appear that this provision would apply to the City of Dana Point since its housing element has been certified. Thus, the City will only need to find suitable sites and zoning for its assigned 5th RHNA cycle need.

In addition, it appears that the City of Dana Point may misinterpret that the 3rd, 4th and 5th RHNA cycle Allocation requirements will be combined in its next HCD site inventory review. Unused land use capacity from prior RHNA cycles may be re-used to address 5th cycle RHNA site inventory requirements as long as a jurisdiction such as the City of Dana Point has an HCD approved housing element. Only jurisdictions with uncertified housing elements are required to carry over and combine the deficit in their last RHNA cycle (4th cycle) site inventory with their 5th cycle RHNA Allocation's site inventory responsibility. Gaps between the RHNA Allocation, i.e., the number of housing units to be zoned, and the number of housing units actually built are never carried over whether a jurisdiction has a certified or uncertified housing element. In short, the RHNA Allocation is not a building quota.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

Written Determination Regarding Appeal from the
County of Ventura

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

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III.

THE COUNTY'S APPEAL

A. County's Appeal

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² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

AB 2158 factors: the County cites the following factors: (1) existing or projected jobs-housing balance, (2) sewer or water infrastructure constraints for additional development, (3) availability of land suitable for urban development or for conversion to residential use, (4) lands protected from urban development under existing federal or state programs, (5) county policies to preserve prime agricultural land, (6) distribution of household growth assumed for purposes of comparable Regional Transportation Plans, (7) county-city agreements to direct growth towards incorporated areas of County, (8) high housing cost burdens, (9) housing needs of farmworkers, and (10) housing needs generated by the presence of a university campus within a jurisdiction.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the County based on the following AB 2158 factors: (1) existing or projected jobs-housing balance, (2) sewer or water infrastructure constraints for additional development, (3) availability of land suitable for urban development or for conversion to residential use, (4) lands protected from urban development under existing federal or state programs, (5) county policies to preserve prime agricultural land, (6) distribution of household growth assumed for purposes of comparable Regional Transportation Plans, (7) county-city agreements to direct growth towards incorporated areas of County, (8) high housing cost burdens, (9) housing needs of farmworkers, (10) housing needs generated by the presence of a university campus within a jurisdiction, and (11) housing needs generated by the presence of a university campus within a jurisdiction. The County requested a reduction of 536 units from its Draft RHNA Allocation of 1410 units.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the County of Ventura. After the County of Ventura presented its revision request to the Appeals Board, the Board discussed the merits of the request and the

SCAG staff recommendation. After discussion, the Appeals Board voted to reduce the County's RHNA allocation by 28 percent. At that time, the County represented that the reduction would result in an allocation of 1,115 units, which the Appeals Board approved.

On May 29, 2012, SCAG received a RHNA appeal from the County based on SCAG's failure to adequately consider the local planning factors of the County as stated above. The County requested a reduction of an additional 60 units from their revised allocation of 1,115 units.

The County of Ventura's appeal was heard by the RHNA Appeals Board on July 13, 2012, at a noticed public hearing. The County and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference. At this hearing, the County raised the fact that it had made a mathematical error during the revision process and that a reduction of 28 percent of 1410 units actually results in 1,015 units, and not 1,115 units. The Appeals Board agreed and voted to correct the County's revised allocation to 1,015 units.

C. Appeals Board Review

SCAG staff prepared a report in response to the County's appeal. That report provided the background for the draft RHNA allocation to the County of Ventura, and assessed the County's claims regarding each of the AB 2158 factors cited by the County. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071213.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony

and all documents submitted by the County, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. AB 2158 Factors

a. Existing or projected jobs-housing balance

The County contends that the 2010 Census indicates that its jobs-housing balance equals a 1.29 ratio. According to the County, its General Plan addresses potential jobs-housing balance issues since many jobs located within unincorporated Ventura County are related to agriculture.

Given that the County did not provide an explanation or documentation to support the citation of this planning factor as a justification reduction, there is no information from which staff can analyze this planning factor as a basis for the County's appeal. As such, the County has not established that SCAG failed to adequately consider information related to this factor.

b. Sewer or water infrastructure constraints for additional development

The County contends that water service in existing areas in the unincorporated County areas is provided by a number of small mutual water companies or private wells. In one of the areas, the monitoring agency requires this area to pay surcharge fees in excess of its allocation. In another area, water service is provided by another agency and while there are adequate facilities to serve low-density development, minimum Ventura County standards are not met for fire flow for high-density residential use. Moreover, the County argues that the remaining areas in question are located within the sphere of influence of the City of Ventura and are regulated by city water service policy, and new service in one of the areas can only be provided if new development is consistent with the City's General Plan. Additionally, the costs of developing or upgrading sewer systems to support high-density development, especially affordable housing, pose a challenge for the County to provide the necessary infrastructure.

Pursuant to Government Code Section 65584.04(d)(2)(A), to the extent data is available from local jurisdictions, SCAG must consider:

“Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and ***distribution decisions made by a sewer or water service provider*** other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.”

Govt. Code § 65584.04(d)(2)(A) (emphasis added).

For Government Code Section 65584.04(d)(2)(A) to apply as a justification to reduce the County’s Draft Allocation, the jurisdiction must be precluded from providing necessary infrastructure for additional development due to supply and distribution decisions made by a sewer or water provider other than the local jurisdiction. For each of the areas with water constraints mentioned by the County, it is not evident that the respective water provider has rendered a decision that would prevent the County from providing necessary infrastructure. Moreover, costs to upgrade and develop appropriate infrastructure cannot be considered by SCAG as a justification for a reduction since the RHNA Allocation is not a building quota. Rather, a jurisdiction is required to plan and zone for projected housing need and is not penalized for the assigned units not being built.

Therefore, the County has not established that SCAG failed to adequately consider information related to this factor.

- c. Availability of lands suitable for urban development or for conversion to residential use

The County argues that only a small portion of its land is suitable for urban development due to topographical limitations. Moreover, most land that meets the definition of “urban development” is located within the sphere of influence adjacent to incorporated cities. The

County contends that the “Guidelines for Orderly Development” (Guidelines) is an agreement between the County and surrounding cities to encourage the annexation of parcels within the sphere of influence of a City if that parcel is to be developed for urban purposes.

The County has not presented sufficient evidence to support topographical limitations to development. Moreover, Government Code Section 65584.04(d)(2)(B) requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction’s existing zoning and land use policies and restrictions. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density.

Moreover, per SCAG’s adopted Allocation Methodology for this 5th cycle RHNA, the household growth projections were calculated using local input from the Integrated Growth Forecast process. Additionally, the local input on the household growth projection was reduced further at the County’s request in May 2011, to adequately reflect its recommended method to estimate household growth rates. The general presumption is that when providing local input on the household growth, planning factors such as land suitable for urban development and spheres of influence beyond the County’s control are already taken into account for in the local input provided to SCAG. No evidence was submitted that the spheres of influence have changed since the most current input provided in May 2011.

Thus, the County has not established that SCAG failed to adequately consider information related to this factor.

d. Lands protected from urban development under existing federal or state programs

The County contends that most of its unincorporated land is protected by a variety of state and federal programs, and there are many private land trusts that have been established to protect biological diversity. Moreover, the State Land Conservation Act, also known as the Williamson Act, preserves open space and agricultural land through contracts established between the County and qualifying landowners.

Per SCAG's adopted Allocation Methodology, the household growth projections were calculated using local input for the Integrated Growth Forecast process, including from the County of Ventura. Additionally, the local input on the household growth projections was reduced further at the County's request in May 2011, to adequately reflect its self-reported change in its household growth rates. While the County did not provide a "RHNA number," it provided input on the household growth rate, which SCAG directly incorporated into the Integrated Growth Forecast to develop the County's Draft RHNA Allocation.

It should be presumed that when providing local input on its household growth, planning factors such as lands protected by federal and state programs have already been accounted for prior to the local input submitted to SCAG. No evidence was submitted that these areas have changed since the most current input was provided in May 2011.

Thus, the County has not established that SCAG failed to adequately consider information related to this factor.

e. County policies to preserve agricultural land within an unincorporated area

The County of Ventura states that as one of the principal agricultural counties in the State, it has adopted several policies in its General Plan to continue its preservation of the agricultural industry. These policies include discretionary development on farmland, encouragement of Williamson Act contracts, and expanding Greenbelt Agreements. Greenbelt Agreements reassure property owners within certain areas that land will not be prematurely converted to uses that are incompatible with agricultural or open space uses. In Ventura County, agreements are executed by mutually interested parties, such as between the County and city, or among cities. Moreover, the County contends that its Save Open-Space and Agricultural Resources (SOAR) Ordinance requires that changes to land designations designated by the County's General Plan as open space, agricultural, or rural, can only occur through voter approval.

Section 65584.04(d) (2)(D) allows councils of governments to consider county policies to preserve prime agricultural land within an unincorporated area in developing its RHNA Allocation Plan. However, as part of the development of the Integrated Growth Forecast household projections, SCAG staff surveyed all jurisdictions for their local input on projected household growth. The local input served as the basis for household projections so that local planning constraints, such as County policies to preserve prime agricultural land in the cities' spheres of influence, could be identified before the Draft RHNA Allocation distribution to jurisdictions. The County of Ventura provided local input to SCAG on its household growth projection, which at minimum should have considered the above-referenced County policies. For example, the farmland inventory map provided in the County's appeal is sourced from 2010, before the County's most recent input on the household growth rate.

Moreover, Government Code Section 65584.04(f) provides that any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in the share of a city's or county's regional housing need. Therefore, SCAG is prohibited from considering the above-referenced ordinances or policies as a basis for reducing the County's Allocation.

As such, the County has not established that SCAG did not adequately consider information related to this factor.

f. Distribution of household growth assumed for purposes of comparable Regional Transportation Plans

The County of Ventura contends that there is no transportation-oriented development in its unincorporated area because there are no major urban areas requiring transit stops in its jurisdiction.

Transit-oriented housing is one tool for identifying suitable sites, but other types of zoning or policies should be considered by a jurisdiction to accommodate its projected growth. Similar to the staff response on the availability of land suitable for urban development, a jurisdiction should explore alternative development opportunities such as infill development and underutilized land. In addition, current transportation-focused development, or lack thereof, does not preclude addressing future housing need, and additional transportation opportunities may possibly occur.

Thus, the County has not established that SCAG failed to adequately consider information related to this factor.

g. County-city agreements to direct growth toward incorporated areas of County

The County cites the Guidelines for Orderly Development (“Guidelines”) as a comprehensive policy agreement to protect open space and agricultural resources between Ventura County and the cities of Ventura County. Under the Guidelines, proposed urban development within the spheres of influence of a City would annex to the adjacent city to receive municipal services, rather than forming new or expanding existing County service areas.

Pursuant to the adopted RHNA Allocation Methodology, the household growth projections were calculated using local input from the Integrated Growth Forecast process, including from the County of Ventura. Additionally, the local input on the household growth projection was reduced further at the County’s request in May 2011, to adequately reflect its recommended method in estimating its household growth rates. It should be presumed that when providing local input on its household growth, planning factors such as policies and agreements to direct growth towards incorporated areas are included in provided input. No evidence was submitted that these areas have changed since the input provided in May 2011, and thus SCAG staff does not recommend a housing need reduction based on this planning factor. Moreover, SCAG is prohibited from considering the above-referenced County ordinances or policies as a basis for reducing the County’s Draft Allocation in accordance with Government Code Section 65584.04(f).

Thus, the County has not established that SCAG failed to adequately consider information related to this factor.

h. High housing cost burdens

The County of Ventura contends that it has experienced a decrease in population “due to soaring home prices and the shortage of available vacant land for development.”

One of the objectives of state housing law, per Government Code Section 65584(d) (1), is to increase the housing supply and mix of housing types for all jurisdictions. Per Government Code Section 65584.04(2)(B), the County cannot restrict its capacity to accommodate future housing need to developable land, and must also consider alternative zoning and policies. SCAG accepts the County’s assertion on this particular planning factor but finds that it provides no basis to support a reduction in the County’s Draft RHNA Allocation.

i. Housing needs of farmworkers

The County explains in its appeal that it is committed to farmworker housing and actively promotes policies and programs for the development of such housing. SCAG accepts the County’s AB 2158 information on this particular planning factor but finds that it provides no basis to support a reduction in the County’s Draft RHNA Allocation.

j. Housing needs generated by the presence of a university campus within a jurisdiction

The County asserts that housing needs generated by California State University, Channel Islands, for both students and faculty are met through university-owned housing and other on-campus housing. Moreover, according to the County, townhomes generated by the University are the County’s primary source of new multi-family housing.

The purpose of the Regional Housing Needs Assessment process is to identify future household need for all income categories for each jurisdiction for a projection period and is not a building quota. Jurisdictions are not penalized if these units do not get built. However,

jurisdictions are not exempt from planning for future housing need if past housing need was not developed. SCAG accepts the County's assertion on this particular planning factor but finds that it provides no basis to support a reduction in the County's Draft RHNA Allocation.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the County's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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Written Determination Regarding Appeal from the
City of Oxnard

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG’s SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Oxnard submits an appeal and requests a RHNA reduction of 2,801 (of the draft allocation of 7,301 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

AB 2158 factors: the City cites the following factors: (1) sewer or water infrastructure constraints for additional development, (2) county policies to preserve prime agricultural land, (3) market demand for housing, and (4) county-city agreements to direct growth toward incorporated areas of County.

Changed circumstances: the City cites changed circumstances.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: sewer or water infrastructure constraints for additional development, county policies to preserve prime agricultural land, distribution of household growth assumed for purposes of comparable Regional Transportation plans, market demand for housing, and county-city agreements to direct growth toward incorporated areas of the County. The City requested a reduction of 2,801 units from its Draft RHNA Allocation.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Oxnard. After the City of Oxnard presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 2,801 units.

On May 25, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with several local planning factors, and changed circumstances. The City once again requested a reduction of 2,801 units from its Draft RHNA Allocation of 7,301 units.

The City of Oxnard's appeal was heard by the RHNA Appeals Board on July 13, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and

submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Oxnard, and assessed the City's claims regarding changed circumstances and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071213.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. AB 2158 Factors

a. Sewer or water infrastructure constraints for additional development

The City argues that the Draft RHNA Allocation exceeds its ability to provide water supply infrastructure. The City states that Fox Canyon Groundwater Management Agency, an independent special district, manages two of the three water resources that supply the City's groundwater supply aquifers. A Groundwater Management Plan was implemented by the Management Agency that encourages the use of recycled water.

Pursuant to Government Code Section 65584.04(d)(2)(A), to the extent data is available from local jurisdictions, SCAG must consider:

“Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and *distribution decisions made by a sewer or water service provider* other than the local jurisdiction that preclude the

jurisdiction from providing necessary infrastructure for additional development during the planning period.”

Govt. Code § 65584.04(d)(2)(A) (emphasis added).

For this local planning factor to apply, a decision from an external service provider must be made that precludes the jurisdiction from providing infrastructure for additional development. In this case, there is no indication that the recycling measures encouraged by the Management Agency preclude the City from providing water capacity to meet its projected housing need. As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. County policies to preserve prime agricultural land

The City of Oxnard argues that Ventura County and incorporated cities such as Oxnard “have taken several aggressive steps to ensure preservation of rich agricultural soils and focus development within incorporated entities.” These steps include the State’s Williamson Act, Guidelines for Orderly Growth, greenbelt agreements, and Save Open Space and Agricultural Resources (SOAR).

The City contends that under the Williamson Act, owners of agricultural land enter into an agreement to maintain designated land as agriculture for a 10- or 20- year period and as a result of the County establishment of agricultural preserves, large areas of land are removed from consideration. The amount of land covered by the Williamson Act or location of these areas is not specified.

The Guidelines for Orderly Growth were adopted by Ventura County and all County cities in 1969 to “direct urban development within incorporated cities whenever and wherever practical.” These Guidelines created Areas of Interest that define major geographic areas

reflective of a city or community and prevent the formation of any other city in the Areas of Interest. As a result, the City argues that these policies demand for relatively compact cities.

The City also points out that it participates in greenbelt agreements, which ensure that participating entities will not annex land within subject areas in order to preserve open space buffers. One particular agreement, the Oxnard-Camarillo Greenbelt Agreement, calls for the preservation of a large agricultural area that renders the eastern City boundary permanent.

Finally, the City mentions that it adopted a SOAR ordinance in 1998 that prevents the City from developing outside an established line without voter approval. The restriction is in place until 2020 and the City argues that it is limited in its response to demands for additional development.

In regards to the Williamson Act, the appeal and supporting documentation from the City do not provide any information on affected areas, such as acreage, or on the location of the affected areas, only that the County established these ordinances and guidelines beginning in the 1960s. As such, SCAG cannot determine how the Williamson Act affects the City's projected housing need, if at all.

While the City cites several ordinances and policies that aim to preserve open space in and around the City, per Government Code Section 65584.04(f), SCAG cannot consider these measures to reduce the share of a jurisdiction's regional housing need. Specifically, Government Code Section 65584.04(f) provides that "any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need." Moreover, under Government Code Section 65584.04(d)(2)(B), SCAG is not permitted to limit its consideration of suitable housing

sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions. Thus, SCAG finds that the ordinances and policies cited in the City's appeal cannot serve as a basis for a Draft Allocation reduction.

c. Market Demand for Housing

The City argues that its Draft RHNA Allocation exceeds the annual average production of housing units in the City for the past 30 years. It contends that the Draft Allocation assumes the market can develop and absorb these units, and that the rate is 171% above actual market demand for housing over the previous 21 years. The City argues that the annual rate is not supported by local input or market research.

The purpose of the Regional Housing Needs Assessment process is to identify future household need for all income categories for each jurisdiction for a projection period. Jurisdictions are required to demonstrate in their respective housing elements, sites and zoning analysis to accommodate this need. They are not penalized if they do not build or develop these units. While building permits issued can help determine prior building activity, it does not necessarily determine future growth.

Moreover, as part of the development of the Integrated Growth Forecast household projections, SCAG staff surveyed all jurisdictions for their local input on projected household growth. In its appeal, the City of Oxnard acknowledges that the City's local input "essentially matched" the 2014-2021 RHNA Allocation. Moreover, the adopted regional Allocation Methodology took into account all indicators of market demand, including trends of building permits, household growth, employment growth and population growth as well as incorporated the latest economic statistics and updated data from the 2010 Census.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

d. County-city agreements to direct growth toward incorporated areas of County

The City states that the Guidelines for Orderly Growth were adopted by Ventura County and all County cities to “direct urban development within incorporated cities whenever and wherever practical.” These Guidelines created Areas of Interest that define major geographic areas reflective of a city or community and prevent the formation of any other city in the Areas of Interest. As a result, the City argues, these policies create relatively compact cities.

As part of a housing element update, a jurisdiction must demonstrate in its sites and zoning analysis the appropriate zoning and other measures to demonstrate how it will accommodate projected housing need. In determining local land use constraints, Government Code Section 65584.04(d)(2)(B), requires that consideration of the availability of land suitable for urban development cannot be limited to existing zoning ordinances or restrictions, and that other types of opportunities must be examined. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City’s allocated growth.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

2. Changed Circumstances

Although the City acknowledges that its Draft RHNA Allocation for 2014-2021 is consistent with the local input the City provided in November 2009, the City argues that the

adoption of the Oxnard 2030 General Plan on October 11, 2011, and 2010 Urban Water Management Plan on May 15, 2012, constitute changed circumstances. Due to the exclusion of certain projects and a variety of land use and density changes, the General Plan “build out” level was reduced significantly, and the 2010 Urban Water Management Plan was based on the adopted General Plan. According to the City, the downward revision of projected households in these two plans warrant a revision in local input and therefore the City should receive a reduction to its Draft RHNA Allocation.

Per Government Code Section 65584.05(d)(1), a jurisdiction may appeal its Draft RHNA Allocation based upon a “significant and unforeseen change in circumstances [that] has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to [Government Code 65584.04(d), local planning factors].” The adoption of a local plan is not an “unforeseen” change of circumstances, particularly since according to the City’s appeal, the proposed changes to the City’s General Plan were occurring as early as 2010.

In addition, Government Code Section 65584.04(f) provides that any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in the share of a city’s or county’s regional housing need. Therefore, SCAG is prohibited by law from considering the “build out levels” made as part of 2030 Oxnard General Plan as a basis to justify a reduction to its City’s Draft Allocation.

As such, the City has not demonstrated an unforeseen change in circumstance meriting a revision of the information it submitted.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City’s appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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Written Determination Regarding Appeal from the
City of Ojai

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th Cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region's jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan ("RTP").¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG's SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal "Open House" sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Ojai submits an appeal and requests a RHNA reduction of 240 units (of the draft allocation of 371 units). The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

Methodology: the City asserts that SCAG failed to determine the City's share of the regional housing need in accordance with the adopted RHNA Methodology

AB 2158 factors: the City cites the following factors: (1) existing or projected jobs-housing balance, (2) availability of land suitable for urban development or for conversion to residential use, and (3) distribution of household growth assumed for purposes of comparable Regional Transportation Plans.

B. Revision and Appeal Process

On February 6, 2012, SCAG received a revision request from the City indicating that SCAG had not received local input from the City in 2009 and that the data submitted by the City on January 24, 2012 had not be taking into consideration in the Draft RHNA Allocation Plan. The revision request presented an adjusted household forecast. On April 2, 2012, the City sent a letter to SCAG requesting the SCAG accept the City's household projection of a 6.4% increase instead of SCAG's household projection increase, and that the adjusted household forecast for year 2021 be reduced from 3,642 to 3,310. SCAG staff included this letter and additional data sent by the City as an addendum to its revision request.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Ojai. After the City of Ojai presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 240 units.

On May 24, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with the adopted

RHNA Methodology and several local planning factors. The City requested a reduction of 240 units from its Draft RHNA Allocation of 371.

The City of Ojai's appeal was heard by the RHNA Appeals Board on July 13, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Ojai, and assessed the City's claims regarding methodology and each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071213.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents submitted by the City, the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Methodology

The City of Ojai contends that the Draft RHNA Allocation for the City was derived from inaccurate General Plan data provided by Ventura Council of Governments ("VCOG") for the 2008 Regional Transportation Plan for all jurisdictions in Ventura County. According to the appeal, VCOG's input was based on the City's General Plan. The City of Ojai argues that not only is the VCOG General Plan information inaccurate, but that per Government Code Section

65584.04(f), SCAG cannot consider a jurisdiction's General Plan as a justification to reduce its share of regional housing.

The City correctly asserts that state housing law prohibits SCAG from considering General Plans as a justification to reduce a jurisdiction's share of regional housing need. Despite multiple outreach efforts by SCAG staff, the City of Ojai did not submit any local input for the 2012 Integrated Growth Forecast before the release of the Draft RHNA Allocation and as a result, SCAG used the most recent data available for the City to develop projected household growth from a variety of sources. As discussed in the staff report (Exhibit B), in the absence of local input, the Draft household forecast for the City of Ojai was derived using four major sources: (1) the City's household estimate for year 2008 from the California Department of Finance (DOF), (2) the 2008 RTP forecast, (3) the Ventura county 2040 forecast by VCOG from 2008, and (4) the preliminary county forecast for the 2012 RTP.

In addition, the 2008 VCOG information was only one source for data for the City's household projection and this information was incorporated into the Integrated Growth Forecast at the beginning of the RHNA process. Adjustments to the Draft RHNA Allocation, or share of regional housing need, must be consistent with RHNA law including the aforementioned prohibition on using a General Plan as a justification to reduce a jurisdiction's housing need. Therefore, SCAG is prohibited from considering the reductions made to the 2030 Ojai General Plan as a justification for a reduction to its Draft RHNA Allocation. In addition, state law requires the consideration of other opportunities for development. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. Alternative development opportunities should be explored further and could possibly provide the land needed to zone for the City's projected growth.

Because the City has provided no evidence to suggest that the City's share of assigned housing need is inconsistent with the RHNA Allocation Methodology or that SCAG failed to determine the City's Draft Allocation in accordance with the RHNA Allocation Methodology, the City has not presented a valid Methodology appeal.

2. AB 2158 Factors

a. Existing or projected jobs-housing balance

The City argues in its appeal that the adopted 2012 RTP Growth Forecast shows 7,800 jobs in the City in 2035, whereas the VCOG projection is only 5,285 in 2035. No other statement or documentation is provided corresponding to this planning factor.

Pursuant to SCAG's adopted Allocation Methodology, SCAG has concluded that the existing and projected jobs-housing relationships are either stable, or show a gradual and moderate improvement for most of the local jurisdictions through the forecasting and planning horizon. The general presumption is that when providing local input on household growth, planning factors such as jobs-housing balance are included as part of the local input provided. Moreover, the adopted regional Allocation Methodology took into account each member jurisdiction's existing and projected jobs-housing relationship. These relationships were appropriately maintained for the City of Ojai throughout the forecasting/planning horizons as part of the Integrated Growth Forecast development.

Therefore, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Availability of land suitable for urban development for the conversion to residential use

The City argues that its 1997 General Plan shows a lack of available land, even when increased density and zone changes are considered, and that the General Plan assumes that underutilized parcels will be developed to capacity at build out.

Government Code Section 65584.04(d)(2)(B), requires that consideration of the availability of land suitable for urban development cannot be limited to existing zoning ordinances or restrictions, and that other types of opportunities must be examined. As such, SCAG is not permitted to limit its consideration of suitable housing sites or land suitable for urban development to a jurisdiction's existing zoning and land use policies and restrictions.

Furthermore, as recognized by the City, SCAG cannot consider General Plans as a justification to reduce a jurisdiction's share of regional housing need, per Government Code Section 65584.04(f). Thus, SCAG cannot reduce the City's RHNA allocation based upon this planning factor.

c. Distribution of Household Growth

The City states that housing should be distributed to maximize the use of public transportation infrastructure, but that there are limited opportunities to co-locate housing with transit in the City.

Transit-oriented housing is one tool for identifying suitable sites, but other types of zoning or policies should be considered by a jurisdiction to accommodate its allocated growth. Similar to the staff response on the availability of land suitable for urban development, a jurisdiction should explore alternative development opportunities such as infill development and underutilized land. Moreover, current transportation focused development, or lack thereof, does not preclude addressing future household need, and additional transportation opportunities may possibly occur.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
October 4, 2012	SCAG's Regional Council holds a public hearing to review and consider adoption of the Final RHNA Plan.
October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
Dec 3, 2012	Deadline for final approval of SCAG's Final RHNA Plan by HCD.
October 31, 2013	Due date for jurisdictions in the SCAG Region to submit revised Housing Elements to HCD.

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Written Determination Regarding Appeal from the
City of Fillmore

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- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan (“RTP”).¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG’s SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal “Open House” sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Fillmore submits an appeal and requests a RHNA reduction of Very Low Income units by 100 units and Low Income units by 100 units from its Draft RHNA Allocation of 694 units. The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

AB 2158 factors: the City cites the following factors: (1) existing or projected jobs-housing balance, (2) availability of land suitable for urban development or for conversion to residential use, and (3) market demand for housing.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: existing or projected jobs-housing balance, availability of land suitable for urban development or for conversion to residential use, and distribution of household growth assumed for purposes of comparable Regional Transportation plans. The City requested a reduction of 200 units from its Draft RHNA Allocation.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Fillmore. After the City of Fillmore presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 76 units.

On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with several local planning factors. The City requested a reduction of Very Low Income units by 100 units and Low Income units by 100 units from its Draft RHNA Allocation of 694 units.

The City of Fillmore's appeal was heard by the RHNA Appeals Board on July 13, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference. The City did not attend the hearing.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Fillmore, and assessed the City's claims regarding each of the AB 2158 factors cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071213.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all documents submitted by the City (note that no testimony provided by the City at the hearing), the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. AB 2158 Factors

a. Jobs/Housing Balance

The City argues that its current Draft Housing Element indicates Fillmore as having a jobs/housing ratio of .80, demonstrating that Fillmore is housing rich and additional residential development would further exacerbate this ratio.

Pursuant to SCAG's adopted Allocation Methodology for this 5th cycle RHNA, the household growth projections were calculated using local input for the Integrated Growth Forecast process, including from the City of Fillmore. The general presumption is that when providing local input on household growth, planning factors such as jobs-housing balance are included as part of the local input provided by the jurisdictions. Moreover, the adopted regional Allocation Methodology took into account each member jurisdiction's existing and projected jobs and housing relationship. These relationships were appropriately maintained for all

jurisdictions throughout the forecasting/planning horizons as part of the Integrated Growth Forecast development.

As such, the City has not established that SCAG failed to adequately consider information related to this factor.

b. Availability of land suitable for urban development or for conversion to residential use

The City argues that in order to accommodate its assigned housing need from the 4th RHNA cycle in its corresponding housing element, it must rezone and consider conversion of non-residential areas to residential, particularly for the low and very-low income categories. The City further contends that the conversion of commercial and industrial areas to high density residential will remove its ability to recover expected sales and property taxes. More zoning changes will be needed to accommodate the 5th RHNA cycle need, and the City argues that its lack of available land to accommodate the 4th and 5th cycle housing need will burden the City.

Government Code Section 65584.04(d)(2)(B) requires that the consideration of the availability of land suitable for urban development must include other types of land use opportunities other than vacant land. This includes the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density. A potential loss of tax revenue from the conversion of non-residential uses does not preclude a jurisdiction's responsibility to accommodate for future housing need.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

c. Market Demand for Housing

The City argues that there is a lack of demand for building permits, and that the development rate has been significantly lower than planned. The City states that it is projected to construct less than one-third of its Draft RHNA Allocation between 2014 and 2021 and that the Draft Allocation is an unrealistic projection.

RHNA targets by income category represent the land use capacity needed to accommodate anticipated housing need resulting from expected population and employment growth and are not building quotas. Local growth input from the jurisdictions gathered through the Integrated Growth Forecast process was incorporated into the RHNA process according to the adopted RHNA Methodology, and was the basis for determining projected housing need. Thus, SCAG staff concludes that this planning factor does not justify a reduction in the City's Draft Allocation.

Thus, the City has not established that SCAG failed to adequately consider information related to this factor.

2. Other Considerations

In its appeal, the City requests for the reduction of Low and Very-low income units only. The reason provided is that the City has an unmet need of 220 units from the 4th RHNA cycle and must accommodate this need in addition to its 5th cycle assigned need in the 5th cycle housing element.

Pursuant to Government Code Section 65584.09, jurisdictions which have not accommodated all of its 4th RHNA need in the corresponding housing element must find suitable sites for the unmet need in the 5th cycle housing element, in addition to the assigned need from the 5th RHNA cycle. The unmet need from the 4th cycle must be completed within the first year of the 5th cycle in order for the California Department of Housing and Community

Development to approve the housing element. Although this situation could potentially apply to the City of Fillmore, SCAG cannot reduce a jurisdiction's 5th RHNA cycle on this basis because it is the responsibility of every jurisdiction to adopt a housing element in accordance with state housing law.

Moreover, the income-level distribution for total housing need was determined using 2010 Census data and adjusted by 110% towards the county distribution using county median income, per adopted RHNA Allocation Methodology. Changes to a jurisdiction's Draft RHNA Allocation would apply to the total assignment rather by income category. A reduction to only select income categories would be inconsistent with the adopted RHNA Methodology and its application under Government Code Section 65584.04 and 65584.05.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
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March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
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April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
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Written Determination Regarding Appeal from the
City of Norco

2.12

- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.”

Govt. Code § 65580 (emphasis added). The express intent of the Legislature in enacting the RHNA statute was as follows:

- “(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.”

Govt. Code § 65581.

Against this backdrop, each city and county in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. Govt. Code § 65300. The General Plan must include certain elements, including one for housing. Govt. Code § 65302. The housing element “consists of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” Govt. Code § 65583. The existing and projected needs must include the locality's share of the regional housing need allocation plan as prepared determined by each council of governments pursuant to Government Code Section 65584.

The first step in the RHNA process is the determination of the statewide housing need, which is the responsibility of the California Department of Housing and Community Development (HCD). Govt. Code § 65584(a). Once HCD determines the statewide need, HCD then determines each region's existing and projected housing need. Govt. Code § 65584(b). This "determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments." Govt. Code § 65584.01(b).

Under AB 2158, a 2004 amendment to the RHNA legislation (Stats. 2004, ch. 696), each council of governments is required to develop a methodology for distributing the existing and projected regional housing need to local governments within the region that is consistent with the objectives of Section 65584(d). Section 65884.04(a). AB 2158 proscribed that "To the extent that sufficient data is available," the following factors must be included to develop the methodology that allocates regional housing needs ("RHNA Allocation Methodology"):

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands

where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583 that changed to non-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.”

Govt. Code § 65584.04(d). These factors are referred to as “the AB 2158 factors.”

SB 12 (Stats. 2007, ch. 5), which was signed by Governor Arnold Schwarzenegger on April 10, 2007, and codified as Government Code Section 65584.08, established a pilot program for SCAG’s implementation of the 4th cycle RHNA, based on an integrated long-term growth forecast. These reform provisions have now been fully incorporated.

Moreover, on September 30, 2008, Governor Schwarzenegger signed into law the Sustainable Communities and Climate Protection Act (“SB 375”). SB 375 is the first legislation in the nation to link transportation and land use planning with global warming and it was intended to further AB 32’s goal of reducing greenhouse gas (“GHG”) emissions by requiring that a sustainable communities strategy (“SCS”) be included to each regional transportation plan. The SCS sets forth a transportation and land use strategy to achieve the greenhouse gas emissions targets established by the California Air Resources Board. SB 375 now requires housing element updates to be synchronized with the timing of regional transportation plan updates. Govt. Code § 65588(b). Furthermore, the SCS must consider the state housing goal set forth by the RHNA statute and “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region.” Govt. Code §§ 65580(b)(2)(B).

Each council of governments must distribute a draft allocation of regional housing needs to each local jurisdiction based on the underlying data and the methodology adopted by the council of governments. Govt. Code § 65584.05(a). Any local jurisdiction may seek a revision and/or appeal of its allocation pursuant to Section 65584.05(b) and (d).

Upon completion of the revision and appeals processes as described in more detail below, each council of governments must adopt a final regional housing need allocation plan that allocates a share of the regional housing need by assigning housing units by income category to each city, county, or city and county – also referred to as the final RHNA allocation plan – which is submitted to HCD. Govt. Code § 65584(b). HCD must determine whether or not the final allocation plan is consistent with the regional housing need, and HCD may revise the determination of the council of governments if necessary to obtain this consistency. Govt. Code § 65584.05(h).

B. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (5th cycle)

1. Development of the Draft RHNA Allocation Plan

The 5th cycle RHNA began in May 2009, when SCAG staff began surveying each of the region's jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan ("RTP").¹ On or about July 29, 2009, SCAG sent a letter to all jurisdictions requesting input on the Integrated Growth Forecast. These surveys continued through August 2011, and during this time, SCAG staff engaged in extensive communication and data sharing with each jurisdiction in the SCAG region, including in-person meetings, to ensure the highest participation in gathering local input.

In January 2011, SCAG distributed an informal AB 2158 planning factor survey to all jurisdictions requesting additional information and input from jurisdictions to develop SCAG's SCS. The survey requested input regarding opportunities and constraints for development in their respective cities/counties, such as lack of water infrastructure, protected open space, and market demand for housing.

In June 2011, as a required component of the RHNA process, a formal AB 2158 planning factor survey was distributed to all jurisdictions, which included the same factors described in the prior informal survey. During this time, SCAG held five informal "Open House" sessions to answer questions about the survey and the RHNA process. SCAG used responses from both surveys in its development of the RHNA Allocation Methodology.

¹ The information discussed in this section has been made publicly available during the RHNA process, and may be accessed at the SCAG RHNA website: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

Moreover, beginning in January 2011, the RHNA Subcommittee, a subcommittee formed by the SCAG Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process, policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about August 17, 2011, SCAG received its RHNA determination from HCD. *See* <http://rtpscs.scag.ca.gov/Documents/rhna/hcdRHNAfinalDet081711.pdf>. HCD determined a range of housing need of 409,060 – 438,030 units for the SCAG region for 2014-2021. *Id.* HCD stated that “[t]his range considered the extraordinary uncertainty regarding national, State, and local economies and housing markets,” and that “[f]or this RHNA cycle only, [HCD] made an adjustment to account for abnormally high vacancies and unique market conditions due to prolonged recessionary conditions, high unemployment, and unprecedented foreclosures.” *Id.*

Over the course of two meetings on August 12th and 26th, 2011, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed and further recommended the proposed methodology to the Regional Council, which approved the proposed methodology for distribution on September 1, 2011. During the 60-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input.

On October 11th and 19th, 2011, SCAG noticed and held further public meetings to receive verbal and written comments on the proposed methodology. After the close of the public

comment period, on November 3, 2011, the Regional Council adopted the RHNA Methodology. See <http://rtpscs.scag.ca.gov/Documents/rhna/RHNAFinalAllocationMethodology110311.pdf>.

On December 9, 2011, SCAG released the Draft RHNA Allocation Plan as part of the agenda for the RHNA Subcommittee meeting. The Draft RHNA Allocation Plan was recommended by the RHNA Subcommittee for further approval by the CEHD Committee and the Regional Council. The CEHD and the Regional Council reviewed and approved the Draft Allocation on February 2, 2012.

On April 4, 2012, the Regional Council unanimously approved SCAG's 2012-2013 RTP/SCS, including its jurisdictional level Integrated Growth Forecast.

II.

THE REVISION REQUEST AND APPEAL PROCESS

A local jurisdiction may request a revision of its share of the RHNA in accordance with the AB 2158 factors. Govt. Code § 65584.05(b). If the council of governments does not approve the revision, the jurisdiction may appeal its draft allocation on three grounds:

1. The council of governments failed to adequately consider the information submitted regarding the AB 2158 factors (an "AB 2158 appeal");
2. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted regarding the AB 2158 factors (a "change in circumstances appeal"); and
3. The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments (a "methodology appeal").

Govt. Code § 65584.05(d)(1) and (2).

If a local jurisdiction did not request a revision based upon an AB 2158 factor, it may file an appeal based on #2 and #3 above.

If the council of governments lowers any jurisdiction's allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. *See* Govt. Code § 65584.05(g). Alternatively, two or more local governments may agree to an alternative distribution of appeals housing allocations that maintains the total housing need originally assigned to these communities. *Id.*

The Regional Council adopted Procedures Regarding Revision Requests, Appeals and Trade & Transfers (the "Appeals Procedure") for jurisdictions wishing to request a revision to their allocated need, to appeal their allocated housing need, or to trade and transfer their allocated housing need on February 2, 2012 (and it was amended on May 3, 2012). The existing law and the procedures defined the parameters and bases for a successful revision or appeal. The Appeals Procedure was provided to all jurisdictions, and posted on the Internet (<http://rtpscs.scag.ca.gov/Documents/rhna/RHNARevisionAppealsProcedures.pdf>).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on June 2, 2011. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

Local jurisdictions were permitted to file revision requests until March 15, 2012. On April 19, 2012, the RHNA Appeals Board held a meeting to review the submitted revision requests to the Draft RHNA Allocation. Fourteen jurisdictions submitted revision requests to their respective Draft RHNA Allocation. Pursuant to state housing law, jurisdictions must base their request on at least one of the AB 2158 planning factors. A total of 7,378 units were requested for reduction. Twelve of the revision requests were denied by the Appeals Board and two, City of La Puente and the County of Ventura, were granted partial reductions of 149 and 395,² respectively. The 544 successfully reduced units were deducted from the Draft RHNA Plan. The RHNA Appeals Board made a final decision on each request as reflected in the minutes of the April 19, 2012, meeting.

Local jurisdictions unsatisfied with their revision request had the option of filing an appeal of their Draft RHNA allocations by May 29, 2012. Thirteen jurisdictions filed timely appeals; however, one jurisdiction (City of Glendora) withdrew its appeal. Two jurisdictions (the Cities of Dana Point and Norwalk, respectively) did not file revision requests but filed appeals. The hearings for these appeals occurred on July 12th and 13th, 2012.³

III.

THE CITY'S APPEAL

A. City's Appeal

The City of Norco submits an appeal and requests an unspecified reduction in number of units from its Draft RHNA Allocation of 818 units. The grounds for appeal are as follows:

² The RHNA Appeals Board originally granted a reduction of 295 units during the revision process, however, at its July 13, 2012, appeals hearing, the County of Ventura demonstrated that it had made a mathematical error and the correct number of units should have been 395. The RHNA Appeals Board agreed and voted to correct the error.

³ An updated complete chronology is attached hereto as Exhibit A.

Changed circumstances: the City cites changed circumstances resulting from the decrease in the City's population due to the future closure of the California Rehabilitation Center.

B. Revision and Appeal Process

On March 15, 2012, SCAG received a revision request from the City based on the following AB 2158 factors: availability of land suitable for urban development or for conversion to residential use and high housing cost burdens. The City did not specify the number of units for reduction but indicated approximately 400 units can be accommodated, at a density of 20 units per acre, on vacant developable properties without creating overconcentration.

On April 19, 2012, the SCAG Appeals Board held a meeting to review the submitted revision requests, including from the City of Norco. After the City of Norco presented its revision request to the Appeals Board, the Board discussed the merits of the request and the SCAG staff recommendation. After discussion, the Appeals Board voted to deny the City's revision request for a reduction of 76 units.

On May 29, 2012, SCAG received a RHNA appeal from the City based on SCAG's failure to determine the City's share of the regional housing need in accordance with several local planning factors. The City requested a reduction of an unspecified number of units from its Draft RHNA Allocation.

The City of Norco's appeal was heard by the RHNA Appeals Board on July 13, 2012, at a noticed public hearing. The City and the public were afforded an opportunity to comment and submit documents related to the appeal and SCAG staff's recommendation, which documents and comments were considered by the Board and are incorporated herein by reference. The City did not attend the hearing.

C. Appeals Board Review

SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to Norco, and assessed the City's claims regarding the change in circumstances cited by the City. Staff's report is available at <http://www.scag.ca.gov/committees/rhna071213.htm> and incorporated herein by reference.

D. Appeals Board Decision

Based upon SCAG's adoption of the RHNA Allocation Methodology and the Integrated Growth Forecast, the RHNA Appeals Procedure and the process that led thereto, all documents submitted by the City (note that no testimony was provided by the City), the SCAG staff report, and all public comments, the RHNA Appeals Board denies the appeal on the following grounds:

1. Change in circumstances

The City indicates that the City's population base will decrease by 4,800 due to the future closure of the California Rehabilitation Center. According to the City, this closure was unknown during the development of the Integrated Growth Forecast and RHNA revision request process. Because of the closure the City's population will decrease, which the City argues warrants a reduction in its assigned housing need.

Populations residing in group quarters, such as dormitories and prisons, are not included in the determination of existing and projected housing needs. Thus, the closure of the prison mentioned in the City's appeal may not have been known or disclosed prior to this appeal process, the future closure of the California Rehabilitation Center would not affect the assigned housing need of the City. As such, the City has not presented a change in circumstance warranting a reduction of its Draft RHNA Allocation.

E. Conclusion

For the foregoing reasons, the RHNA Appeals Board hereby denies the City's appeal.

Reviewed and approved by RHNA Appeals Board this 24th day of July, 2012.

Exhibit “A” -- Updated RHNA Timeline (May 2009-October 2013)

May 2009	SCAG staff begins surveying each of the region’s jurisdictions as part of the collaborative process to develop the Integrated Growth Forecast.
July 29, 2009	SCAG sends letters to all jurisdictions requesting input on the Integrated Growth Forecast.
January 2011	RHNA subcommittee begins holding regular monthly meetings to discuss the RHNA process and policies and to provide recommended actions to the CEHD Committee.
August 2011	Surveys continue through this time and SCAG staff engage in extensive communication and data sharing with each jurisdiction.
January 2011	SCAG distributes informal AB 2158 planning factor survey to all jurisdictions to request additional information and input from jurisdictions to develop SCAG’s SCS.
June 2011	A formal AB 2158 planning factor survey is distributed to all jurisdictions
June 2011	SCAG holds five informal “Open House” sessions to answer questions about the survey and the RHNA process.
August 12 & 26, 2011	RHNA Subcommittee meetings resulting in recommendation to release the proposed RHNA Allocation Methodology to the CEHD Committee.
August 17, 2011	SCAG receives its RHNA determination from HCD.
September 1, 2011	Proposed RHNA Allocation Methodology to the CEHD Committee is distributed.
October 11 & 19, 2011	SCAG holds public meetings to receive verbal and written comments on the proposed methodology.
November 3, 2011	Close of the public comment period; the Regional Council adopts the RHNA Methodology.
December 9, 2011	SCAG releases the Draft RHNA Allocation Plan as part of the agenda for the RHNA subcommittee meeting.
February 2, 2012	SCAG’s Regional Council reviews and approves distribution of SCAG’s Draft RHNA Allocation.
February 9, 2012	Start of period for local jurisdictions to request revision of its draft allocation based upon AB 2158 factors.
March 15, 2012	Last day for local jurisdictions to request revision based upon AB 2158 factors.
April 4, 2012	Regional Council unanimously approves SCAG’s 2012-2013 RTP/SCS.

April 19, 2012	RHNA Subcommittee/RHNA Appeals board meeting to hear revision requests.
April 23, 2012	Start of period for local jurisdiction to file appeal of its draft allocation based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
May 29, 2012	Last day for local jurisdiction to file appeal based upon application of SCAG's methodology, AB 2158 factors or changed circumstances.
June 8, 2012	Deadline for SCAG to notify jurisdiction of public hearing date before RHNA Subcommittee regarding appeal.
July 9-13, 2012	Period in which public hearing(s) before RHNA Subcommittee can be held for appealing jurisdictions.
July 24, 2012	End of the appeals process; RHNA Subcommittee to issue written decisions regarding all appeals by this date.
August 17, 2012	Deadline for jurisdictions who have undertaken the trade & transfer process to submit alternative distribution of draft allocations to SCAG.
August 24, 2012	Final RHNA Subcommittee meeting to recommend the proposed Final RHNA Allocation Plan (Final RHNA Plan), which shall include alternative distribution/transfers and adjustments resulting from post-appeal reallocation process.
September 6, 2012	CEHD Committee to review and recommend approval of the Final RHNA Plan by SCAG's Regional Council. SCAG staff notifies jurisdictions of public hearing date relating to the adoption of the Final RHNA Plan.
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October 5, 2012	SCAG submits its adopted 5 th cycle Final RHNA Plan to HCD.
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